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# BUSINESS LAW

FOR

BUSINESS MEN

STATE OF CALIFORNIA,

A Reference Book Showing the Laws of California for  
Daily Use in Business Affairs

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TENTH EDITION

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Revised and Enlarged

By A. J. BLEDSOE

Member of Legislature of California, Sessions 1891, 1893, 1895

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A. J. BLEDSOE

ATTORNEY-AT-LAW

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BY

A. J. BLED SOE

TENTH EDITION, 1920

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## PREFACE TO TENTH EDITION, 1920.

The Tenth Edition of my business law book is now offered to the public. The work is enlarged and revised to date, including the latest amendments. The ninth edition had 1021 pages; the tenth edition has 1136 pages. In revising the book it was found necessary to omit some subjects, and to add others, with the purpose of making the new edition still more popular and useful.

The success of the preceding nine editions of this work has been such that I may justly claim my "Business Law for Business Men" is now a standard work, and worthy of a prominent place in any library. The work of keeping the book up to date by printed slips will be continued in the future, for the yearly charge of \$1.50.

There is every reason to believe that the new edition will meet with equal favor with those of the past, for which favorable reception by the public I wish to express, in advance, my continued and sincere appreciation.

My experience and observation during a busy life in the practice of law have served to demonstrate to me that much vexatious and expensive controversy, arising from a lack of knowledge of the laws of the State on matters of every-day business, may be avoided, if business men have the means of ascertaining at the moment what their rights and liabilities will be.

Men usually go to a lawyer after a controversy has occurred, and seek a lawyer's advice, not to keep out of trouble, but to be extricated from it. The plan of this work is, to so arrange and illustrate the laws of California pertaining to ordinary business affairs, and rights and obligations in many relations of life, that a busy man can turn immediately to the page and section and find the information he needs, before assuming a liability himself or attempting to enforce a right against others.

A. J. BLEDSOE.

# A. J. BLEDSOE

## ATTORNEY AT LAW

HERMAN W. HELLMAN BUILDING  
Northeast Corner Spring and Fourth Streets  
LOS ANGELES, CALIFORNIA

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REFERENCE: Judge F. M. Angellotti, Chief Justice of the Supreme Court of California, in a letter written by him in 1919, made the following statement: "I have known Mr. Bledsoe personally for many years, and I can say that, as a lawyer and legislator, he has always had a good reputation in California, and in the trial of cases before this Court he has always conducted himself in a legitimate and honorable manner."



WHAT SUPREME COURT JUDGES HAVE  
SAID.

---

JUDGE F. M. ANGELLOTTI.  
(Now Chief Justice)

STATE OF CALIFORNIA,

JUDICIAL DEPARTMENT, SUPREME COURT,  
CHAMBERS OF ASSOCIATE JUSTICE FRANK M. ANGELLOTTI.

San Francisco.

A. J. BLEDSOE, ESQ.

*Dear Sir:*

I appreciate your courtesy in sending me a copy of your book, "Business Law for Business Men," and the limited examination I have been able to give it satisfies me that it is a very creditable work, containing much useful information.

Yours very truly,

F. M. ANGELLOTTI.

---

JUDGE LUCIEN SHAW

STATE OF CALIFORNIA,

JUDICIAL DEPARTMENT, SUPREME COURT,  
CHAMBERS OF ASSOCIATE JUSTICE LUCIEN SHAW.

San Francisco.

MR. A. J. BLEDSOE.

*Dear Sir:*

I have examined your "Business Law for Business Men" with some care, and am very much pleased with it. It is concise, the style is clear, and the matter generally accurate and complete. It is the best work of the kind that I have seen.

Yours very truly,

LUCIEN SHAW.

## JUDGE WALTER VAN DYKE

About a year before his death, Walter Van Dyke wrote the following letter concerning one of the earlier editions of the book:

JUDICIAL DEPARTMENT, SUPREME COURT,  
CHAMBERS OF ASSOCIATE JUSTICE WALTER VAN DYKE  
San Francisco.

A. J. BLEDSOE, Esq., Attorney at Law.

*Dear Sir:*

I have received a copy of your book entitled "Business Law for Business Men," and you will please accept my thanks for the same. The book contains the code law of the State, conveniently arranged, bearing upon the most important subjects pertaining to business affairs, and cannot fail to be of great service to business men, for whose benefit it appears to have been specially intended, but will also prove to be very convenient and useful to the practicing lawyer.

Very truly yours,

WALTER VAN DYKE.

---

CHIEF JUSTICE BEATTY.

(Several years before his death, Judge Beatty wrote the following recommendation.)

STATE OF CALIFORNIA,  
JUDICIAL DEPARTMENT, SUPREME COURT,  
CHAMBERS OF THE CHIEF JUSTICE.

San Francisco.

A. J. BLEDSOE, Esq.

*Dear Sir:*

At the time I received your book, "Business Law for Business Men," and for some time after, I was too busy to examine it with any care, and only lately have done so. As the result of such examination, I am happy to say that I find it very accurate and trustworthy, and should think it would be very useful to non-professional men in ordinary matters of business.

Yours truly,

W. H. BEATTY.



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## PART I.

### BUSINESS CONTRACTS AND LEGAL OBLIGATIONS.

#### Making of Contracts.

Section 1.—BUSINESS CONTRACTS.—By the above heading is meant the contracts and obligations which are connected directly with the usual business affairs of a community. There are many relations in life which constitute or arise out of contracts, and yet which are not connected with the ordinary business affairs of men. Such relations it is not the purpose of this book to indicate, but only the contracts, the obligations, the rights and liabilities of business men in every-day affairs, as defined by the laws of California.

Section 2.—PARTIES TO CONTRACTS.—A contract is an agreement to do or not to do a certain thing. It is essential to the existence of a contract that there should be parties capable of contracting, their consent, a lawful object, and a sufficient consideration. With reference to the parties to a contract, the law of California provides that all persons are capable of contracting, except minors, persons of unsound mind, and persons deprived of civil rights. A minor in this State cannot, under the age of 18, make a contract relating to any interest in real property, or relating to any personal property not in his immediate possession or control. But a minor may make any other contract, and it will be good, unless disaffirmed and repudiated. The contract of a minor, if made by him before he is 18 years of age, may be disaffirmed by the minor himself, either before his majority or within a reasonable time afterwards, or, in case of his death within that period, by his heirs or personal representatives; and if the contract be made by the minor when he is over the

age of 18, he can disaffirm it, but must restore the consideration to the party from whom it was received, or pay its equivalent. There is one exception to the law above stated: A minor cannot disaffirm a contract, because he was under age, to pay the reasonable value of things necessary for his support or the support of his family, if the contract was entered into by him when he was not under the care of a parent or guardian able to provide for him or his family.

A minor in California is a male under the age of 21 or a female under the age of 18.

A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things furnished to him necessary for his support or the support of his family. Where a person is of unsound mind, and yet is not entirely without understanding, he may enter into a contract at any time before his unsoundness of mind has been judicially determined, but such contract will be voidable, subject to rescission. After his incapacity has been judicially determined, a person of unsound mind cannot make any conveyance or other contract, until a court has decided that his reason is restored.

A person deprived of civil rights is not capable of making a contract while in that condition. A person is deprived of civil rights when he is sentenced to imprisonment in the State prison for life, and his civil rights are suspended during the term when he is sentenced for a term less than life. A convict may, however, make and acknowledge a sale and conveyance of property.

With the exceptions above stated, all persons in California are capable of being parties to contracts.

Civil Code, Sections 33, 34, 38, 39, 40, 1556;  
Penal Code, Sections 673, 674, 675.

(a) *Contracts of Married Women.*—A married woman has all the rights in respect to property, real or personal; and the acquisition, use, enjoyment and disposition there-

Section 2, Sub-division (a) page 59, "Business Law for Business Men"—  
SUITS BY OR AGAINST A MARRIED WOMAN—A married woman may be sued without her husband being joined as a party, and may sue without her husband being joined as a party in all actions, including those for injury to her person, libel, slander, false imprisonment, or malicious prosecution, or for the recovery of her earnings, or concerning her right or claim to the homestead property.

Act of the Legislature of California, approved May 16, 1921; in effect July 16, 1921.





of; and to make contracts in respect thereto with any person, including her husband; and to carry on any business, trade or occupation; and to exercise all powers and enjoy all rights in respect thereto and in respect to her contracts, and be liable on such contracts, as if she were unmarried.

Judgment for or against a married woman may be rendered and enforced in any court, as if she was single.

A contract made by a married woman does not bind her husband or his property.

Civil Code, Sections 158, 162.

(b) *Liability of Separate Property of Wife for Debts.*—The separate property of the wife is liable for her own debts contracted before or after her marriage, but is not liable for her husband's debts; provided, that the separate property of the wife is liable for the payment of debts contracted by the husband or wife for the necessities of life furnished to them or either of them while they are living together; provided, that the provisions of the foregoing proviso shall not apply to the separate property of the wife held by her at the time of her marriage or acquired by her by devise, succession, or gift, other than by gift from the husband, after marriage.

Amendments of 1915, page 920.

Section 3.—CONSENT OF PARTIES TO CONTRACT.—To constitute a valid contract, the consent of the parties to it must be freely given, and there must be a mutual consent, and their consent to the agreement must be communicated by each to the other. The laws of California but follow the principles of natural justice when they provide that, when the consent of a party to a contract is not given freely and voluntarily, but is obtained by fraudulent acts or misrepresentations, the contract cannot stand, and will be set aside by the courts whenever the facts are proved. Some of the facts which will

render a contract invalid, by reason of insufficient consent of the parties, are where the consent of any party has been obtained by imprisonment of the person, or unlawful detention of his property, or threats to injure his person, property, or character, or deceiving him by misrepresenting or concealing the truth, or by making a promise without any intention of performing it. Whenever any of these facts appear, to the injury of a party, the courts of California will set aside the contract. Also, a contract will be set aside, because free consent was not given, whenever one party in whom another has confidence uses that confidence for the purpose of taking an unfair advantage over the latter, or whenever one party takes an unfair advantage of another's weakness of mind, or whenever one party takes a grossly oppressive and unfair advantage of another's necessities or distress. Also, consent will not be considered mutual and free, whenever a mistake is made in entering into a contract, where either party, without negligence on his part, acts under an unconscious ignorance or forgetfulness of a fact, past or present, material to the contract, or acts in the belief that a thing material to the contract exists or has existed when in fact the thing does not exist and never did exist. Also, a contract will be set aside whenever all the parties act under a misapprehension of the law, all supposing that they know and understand it; also, because of misapprehension of the law by one party to a contract, of which the other party is aware at the time of contracting, but which he does not rectify.

Civil Code, Sections 1565, 1567, 1569, 1570, 1572, 1575, 1577, 1578.

Section 4.—WHEN CONSENT IS NOT MUTUAL.—Consent of the parties is not mutual unless the parties all agree upon the same thing in the same sense.

Civil Code, Section 1580.

**Section 5.—PROPOSAL OF CONTRACT, ACCEPTANCE, AND REVOCATION.**—One party may propose a thing, but the proposal must be accepted before a contract is created. An acceptance must be absolute and unqualified. If one party makes a proposition, and the other replies with a proposition on his part, there is no contract, because the parties have not mutually agreed upon anything. The proposal may be revoked at any time before it is accepted. It is revoked by giving notice of its withdrawal to the person to whom the proposal was made. It is also revoked, where a certain time was given in which to accept, by the expiration of that time without notice of acceptance; it is also revoked by the failure of the person to whom the proposal is made to do some act which is required of him as a condition preceding the acceptance; and a proposal is necessarily considered revoked by the death or insanity of the proposer. Any usual and reasonable mode of giving notice of acceptance of a proposal may be adopted, as, by mail, or in person, or by messenger, and it will be sufficient to constitute a contract. But the proposer may prescribe a certain mode in which notice of acceptance must be given, and the proposer will not be bound unless the mode prescribed by him is adopted.

Civil Code, Sections 1582, 1583, 1585, 1586, 1587.

**Section 6.—OBJECTS OF CONTRACT.**—The object of a contract must be lawful when the contract is made, and possible of performance, and certain in its terms. However, the law considers everything possible except that which is impossible in the nature of things, and, therefore, to render a contract invalid for impossibility of performance, it must be apparent from the nature of the thing agreed upon that it will not be possible to perform it. Where a contract has but a single object, and such object is unlawful, whether in whole or in part, or wholly impossible of performance, or so vaguely expressed as to be wholly unascertainable, the entire contract is void.



But where a contract has several distinct objects, of which one at least is lawful, in whole or in part, the contract is void as to the unlawful object, and valid as to the rest.

Civil Code, Sections 1595, 1596, 1597, 1598, 1599.

Section 7.—CONSIDERATION OF A CONTRACT.—The consideration of a contract need not necessarily be money. Of course, the consideration must be lawful, that is, it must not be contrary to any express provision of law, or against the policy of express law, or contrary to good morals. But the consideration may consist in any benefit conferred or agreed to be conferred upon the promisor by any other person, to which the promisor is not already lawfully entitled, or in any prejudice suffered or agreed to be suffered by the person to whom the promise is made, which he is not already lawfully bound to suffer. The abandonment of a right, or forbearing to enforce a claim, or any detriment suffered by the promisee, will constitute sufficient consideration for a contract, and be as binding as though the payment of money were agreed upon.

Civil Code, Sections 1605, 1607, 1667.

Section 8.—WHAT CONTRACTS MAY BE VERBAL.—All contracts may be entered into verbally, except such as are specially required by law to be in writing. If the contract is one which the law does not specially require to be in writing, the verbal agreement of the parties is as good as any other, and as binding as it would be if reduced to writing.

Section 9.—WHAT CONTRACTS MUST BE IN WRITING.—The law of California provides that the following contracts are invalid, unless the contract, or some note or memorandum describing its terms, is put into writing and subscribed by the party to be charged, or by his agent: (1) An agreement that by its terms is not to be performed within a year from the making thereof; (2) A special promise to answer for the debt, default, or mis-

carriage of another; but there is one exception to this provision, where it appears that the promise was such as the law considers an original obligation on the part of the promisor; (3) An agreement made upon consideration of marriage, other than a mutual promise to marry; (4) An agreement for the sale of goods, chattels, or things in action, at a price not less than two hundred dollars, unless the buyer accepts or receives part of such goods and chattels, or the evidences, or some of them, of such things in action, or pay at the time some part of the purchase money; but, when a sale is made at auction, an entry by the auctioneer in his sale book, at the time of the sale, of the kind of property sold, the terms of the sale, the price, and the names of the purchaser and person on whose account the sale is made, is a sufficient memorandum; (5) An agreement for the leasing for a longer period than one year, or for the sale of real property, or for an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent is in writing, and subscribed by the party sought to be charged; (6) An agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or commission; (7) An agreement which by its terms is not to be performed during the lifetime of the promisor; (8) Or an agreement to devise or bequeath any property, or to make any provision for any person by will.

Civil Code, Section 1624.

#### Section 10.—CONTRACTS AGAINST PUBLIC POLICY.—

There are certain contracts which the law says are against public policy, and therefore invalid. Generally any contract which has for its object the violation of any law of the land would be illegal, without reference to the question of public policy. But the State recognizes the usual and natural distinctions between morality and immorality, that which is inherently right and that which is inherently wrong, and forbids, on the ground of public policy,

certain contracts which may not be forbidden by the statutes. Therefore it is said that all contracts in violation of morality are void; that agreements to do acts forbidden by the law of God, or which are manifestly in furtherance of immorality, and tend to contaminate the public mind, can not be enforced in the courts of this State. Some illustrations of this rule are, where lodgings are leased for purposes of prostitution; where a contract is made for the printing or sale of obscene or libelous books; so, also, contracts to prevent competition at an auction sale, contracts in restraint of trade, contracts in restraint of marriage, marriage brokerage contracts, wagers, and gambling contracts; all of these, or others of like character, are opposed to good morals, and are void, whether expressly prohibited by statute or not.

Section 11.—CONTRACTS IN RESTRAINT OF TRADE.—Every contract by which any one is restrained from exercising a lawful profession, trade, or business of any kind, is to that extent void. The courts have found great difficulty, however, in determining what are contracts in restraint of trade, within the meaning of the law. It is the public policy to encourage trade and traffic, and any contract which would have the effect of depriving the public of the advantages of competition in trade is void, as opposed to public policy. Thus, where all, or nearly all, of an article of trade or commerce within a community or district is brought within the hands of one man or set of men, so as to practically bring the handling or production of the commodity within such single control, to the exclusion of competition or free traffic therein, this constitutes a monopoly, and is in restraint of trade. Reasonable combinations to regulate prices are valid. But if one agrees with another that he will never again at any time or place work at his trade, or carry on his business, or exercise his profession, such a contract, being without limitation as to time or place, is considered to be in restraint of trade, and is void.

Civil Code, Section 1673.

Section 12.—SALE OF GOOD WILL OF A BUSINESS.—The sale of the good will of a business forms an exception to the law stated in the last Section. One who sells the good will of a business may agree with the buyer that he will not carry on a similar business within a specified county or city, so long as the buyer, or any person to whom the buyer shall dispose of the good will, carries on a like business at the same place. There is an exception, also, in the case of partners. Partners may, upon a dissolution of the partnership, make a valid contract that none of them will carry on a similar business within the whole or a part of the same city or town where the partnership business has been transacted.

Civil Code, Sections 1674, 1675.

Section 13.—ALTERATION OF VERBAL CONTRACT.—Contracts, verbal or written, may be subsequently altered, so as to make the terms or conditions different from what they were at first. But where the contract was verbal only, the law provides that the consent of the parties to its alteration in any respect must be expressed in writing, and where the consent to the alteration is thus given and made, in writing, it does not require a new consideration.

Civil Code, Section 1697.

Section 14.—ALTERATION OF WRITTEN CONTRACT.—A contract in writing may be altered by a contract in writing, or by an executed oral agreement, and not otherwise. The executed oral agreement, which will be sufficient to alter a previous written contract, must consist in the doing or the suffering of something not required to be done or suffered by the terms of the writing. So, if the parties verbally agree upon the doing of something, which one or the other would be bound to do in the proper fulfilment of the written contract, this does not constitute an executed oral agreement to alter the previous writing.

Civil Code, Section 1698.



**Section 15.—EXPRESS CONTRACTS.**—An express contract is one the terms of which are stated in words, from which words, used in a writing or orally between the parties, the agreement between the parties is ascertained.

**Section 16.—IMPLIED CONTRACTS.**—An implied contract is one the existence and terms of which are manifested by the conduct of the parties. The conduct of the parties toward each other, the circumstances surrounding the transaction, may be such that the law will imply that certain agreements were entered into, although no evidence other than such circumstances or conduct may exist as proof of the contracts. The law will imply that a party did make such a stipulation as, under the circumstances disclosed, he ought, upon the principles of honesty, justice, and fairness, to have made. Thus, if one party accepts the services of another, or receives his goods, having reaped the benefit of such services or goods, the law implies a promise on his part to pay for them.

Civil Code, Section 1621.

**Section 17.—TERMINATION OF CONTRACTS.**—A contract is terminated, of course, when it has been fully performed, but it may also be rescinded or canceled under certain circumstances.

**Section 18.—RESCISSION OF CONTRACT.**—A party to a contract may rescind it, if his consent to it, or the consent of any party jointly contracting with him, was given by mistake, or obtained through duress, menace, fraud, or undue influence on the part of the party as to whom he rescinds, or on the part of any other party to the contract jointly interested with the latter. A party to a contract may also rescind it if, through the fault of the party as to whom he rescinds, the consideration for his obligation fails, in whole or in part; or if the consideration becomes entirely void, for any cause; or if the consideration, before it is rendered to him, fails in a material respect,



from any cause. A party to a contract may also rescind it by consent of all the other parties.

Civil Code, Section 1689.

Section 19.—EXTINCTION OF WRITTEN CONTRACT BY CANCELLATION.—The destruction or cancellation of a written contract, or of the signature of the parties, with the intent to extinguish the obligation, does extinguish it as to all the parties consenting to the act. But where a contract is executed in duplicate, the destruction of one copy, while the other exists, will not have the effect of extinguishing the contract.

Civil Code, Sections 1699, 1701.

Section 20.—INTERPRETATION OF CONTRACTS.—The essential thing in the interpretation of a contract, in ascertaining what is meant by it, is to find the intention of the parties. The law of California provides that a contract must be so interpreted as to give effect to the mutual intention of the parties at the time of contracting, so far as that intention is ascertainable and lawful. The language of a contract is to govern its interpretation if the language is clear and explicit, and does not involve an absurdity. When a contract has been reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible. When, through fraud, mistake, or accident, a written contract fails to express the real intention of the parties, oral evidence will be received in the courts to show what the intention of the parties really was, and, when ascertained, the real intention will govern, and the erroneous parts of the writing will be disregarded. The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable. The whole contract is to be considered, in arriving at the intention of the parties. A contract must be given such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if this can be done without a violation of the inten-

tion of the parties. Words used in a contract are to be understood in their ordinary and popular sense, unless used by the parties in a technical sense, or unless a special meaning is given to the words by usage or custom. A contract may be explained by reference to the circumstances under which it was made and the matter to which it relates. However broad may be the terms of a contract, it extends only to those things which it appears the parties really intended to include in it.

Civil Code, Sections 1636, 1638, 1639, 1640, 1641, 1643, 1644, 1647, 1648.

Section 21.—PRINTED AND WRITTEN PARTS OF CONTRACT.—Where a contract is partly written and partly printed, the written parts control the printed parts.

Civil Code, Section 1651.

Section 22.—TIME OF PERFORMANCE OF CONTRACT.—If the time is specified in the contract for its performance, the stipulation of the parties will control. If no time is specified, the law allows a reasonable time. What is a reasonable time for the performance of a contract depends upon the circumstances and the nature of the thing to be done.

Section 23.—PLACE OF PERFORMANCE.—A contract is supposed to be made at some place, and the place where it becomes complete is the place where it is made. If a contract is made by exchange of letters, or telegrams, it is held to have been made at the place where the letter is mailed or telegram filed, containing an unconditional acceptance by one party of the offer of the other. If the communications are oral, either with or without telephone, between parties on opposite sides of a county line, the law deems the contract to have been made in the county where the offer of one is accepted by the other. (Decided by the Supreme Court of California, in the case of *Bank of Yolo vs. The Sperry Flour Company*, which decision is printed in Volume XXVI, California Decisions, page 936.)

**Section 24.—CONTRACTS BY LETTER OR TELEGRAPH.**—Contracts may lawfully be made by telegraph. And where a person telegraphs a proposal to another, who accepts it by telegraph, these telegraphic communications constitute a contract in writing which the law will enforce.

Where parties have exchanged letters and telegrams with a view to an agreement, and have arrived at a point where a clear and definite proposition is made on one side and accepted on the other, with an understanding that the agreement shall be reduced to a formal writing, the contract is complete, though no formal writing is ever executed.

**Section 25.—THE ANTI-TRUST LAW.**—The State of California has passed laws intended to prevent the formation of trusts or combinations whereby monopolies may be created or maintained. What is known as the Cartwright Law was intended to be a rigid anti-trust law. The law provides:

“A trust is a combination of capital, skill or acts by two or more persons, firms, partnerships, corporations or associations of persons, or of any two or more of them for either, any or all of the following purposes:

“1. To create or carry out restrictions in trade or commerce.

“2. To limit or reduce the production, or increase the price of merchandise or of any commodity.

“3. To prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce or any commodity.

“4. To fix at any standard or figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, barter, use or consumption in this state.

“5. To make or enter into or execute or carry out any contracts, obligations, or agreements of any kind or

description, by which they shall bind or have bound themselves not to sell, dispose of or transport any article or any commodity or any article of trade, use, merchandise, commerce or consumption below a common standard figure, or fixed value, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article, commodity or transportation between them or themselves and others, so as to directly or indirectly preclude a free and unrestricted competition among themselves, or any purchasers or consumers in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or directly or indirectly unite any interests that they may have connected with the sale or transportation of any such article or commodity, that its price might in any manner be affected. Every such trust as is defined herein is declared to be unlawful, against public policy and void."

The remainder of the act is taken up with provisions for punishment of those who violate the law. It is made the duty of the attorney-general to bring suit for a forfeiture of the charter of any corporation violating the law, and to enjoin any foreign corporation from further doing business in this state; any person guilty of violating the law is punishable by a fine of not less than fifty dollars nor more than five thousand dollars, or by imprisonment not less than six months nor more than one year, or both such fine and imprisonment; and each day's violation of the provisions of the act constitutes a separate offense. For each day's violation of the law, in any particular, the guilty person, firm, or corporation forfeits fifty dollars, the payment of which may be compelled by the attorney-general or the district attorney. Any person injured in his business or property by a violation of the law, may sue for damages, and when his damages are ascertained, may be given judgment for double the amount.

The intention of the law is evident on its face. It was



intended to prohibit combinations of persons, firms, partnerships, corporations or associations by which trade or commerce shall be restrained or production limited, or competition prevented, or the price fixed of an article of merchandise or produce, to the injury of the public at large. If all the manufacturers of salt, or flour, for instance, should enter into a combination and arbitrarily fix the selling price, so as to deprive the public of the advantages of competition, this would be in restraint of trade, and a violation of the law. Or, if all the manufacturers of lumber in California should enter into an agreement that they would shut down their mills for six months in the year, and thus bring up the price of lumber to a figure which would be oppressive and ruinous to the public in its effects upon building operations, this would be a violation of the intent and spirit of the law. But the law does not intend, nor would the legislature have the power to enact, that a person can no longer do with his own property as he pleases. Notwithstanding the Cartwright law, the manufacturer may still prescribe the price at which his own brand of a particular commodity shall be sold, the wholesaler may still protect the standing and trademark of any particular article distributed by him by fixing the retail price, the producer may still fix the price of his own product, and any owner of property may still have the right to select his own customers.

The Legislature of 1909 adopted an amendment to the Cartwright law, providing "that no agreement, combination or association shall be deemed to be unlawful or within the provisions of this act, the object and business of which are to conduct its operations at a reasonable profit or to market at a reasonable profit those products which can not otherwise be so marketed; provided, further, that it shall not be deemed to be unlawful, or within the provisions of this act, for persons, firms or corporations, engaged in the business of selling or manufacturing commodities of a similar or like character, to employ, form, organize or own any interest in any association,



firm or corporation, having as its object or purpose the transportation, marketing or delivery of such commodities."

Two new sections were also added to the Cartwright law, reading as follows: "It shall be lawful to enter into agreements or form associations or combinations, the purpose and effect of which shall be to promote, encourage or increase competition in any trade or industry, or which are in furtherance of trade." "Labor, whether skilled or unskilled, is not a commodity within the meaning of this act."

Act of the Legislature, approved March 20, 1909.

(a) *Fixing Prices Under the Cartwright Law.*—A contract for the sale of olive oil by the manufacturer, in which he exacts, as part of the consideration for the sale, a promise by the purchaser that he will not sell the oil for less than a stipulated price, does not tend to create a monopoly and is not in restraint of trade. There is no provision of the Cartwright Act which prohibits the making of such a contract. There is nothing either unreasonable or unlawful in the effort by a manufacturer to maintain a standard price for his goods, but it is simply a means of securing the legitimate benefits of the reputation which his product may have attained. A monopoly exists where all, or so nearly all, of an article of trade or commerce within a community or district is brought within the hands of one man or several men, as to practically bring the handling or production of the commodity within such control to the exclusion of free traffic therein. The producer is, in the first instance, under no obligation to sell his product; and when he does sell it, he has the right to exact, as part of the consideration for the sale, a promise by the purchaser that he will not sell it at less than a stipulated price. (Decided by the Supreme Court of California, in the case of *Grogan vs. Chaffee*, which decision is printed in Volume XXXVII, California decisions, page 522.)

Section 27, page 73, "Business Law for Business Men"—HOLIDAYS IN CALIFORNIA—Holidays within the meaning of this code, are every Sunday, the first day of January, twelfth day of February, to be known as Lincoln day, twenty-second day of February, thirtieth day of May, fourth day of July, ninth day of September, first Monday in September, twelfth day of October, to be known as "Columbus day," twenty-fifth day of December, eleventh day of November, known as "Armistice day," every day on which an election is held throughout the state, except a general primary election, and every day appointed by the President of the United States or by the Governor of this State for a public fast, thanksgiving or holiday.

If the first day of January, twelfth day of February, twenty-second day of February, the thirtieth day of May, the fourth day of July, the ninth day of September, the twelfth day of October, the twenty-fifth day of December or eleventh day of November falls upon a Sunday, the Monday following is a holiday.

Every Saturday from twelve o'clock noon until twelve o'clock midnight is a holiday as regards the transaction of business in the public offices of this State, and also in political divisions thereof where laws, ordinances or charters provide that public offices shall be closed on holidays; this shall not be construed to prevent or invalidate the issuance, filing, service, execution or recording of any legal process or written instrument whatever on such Saturday afternoon.

Act of the Legislature of California, approved May 19, 1921; in effect July 19, 1921.



**Section 26.—CONTRACTS COMING DUE ON A HOLIDAY.**—Where a contract by its terms requires the payment of money, or the performance of a condition, on a legal holiday, such payment may be made or condition performed on the next business day succeeding such holiday, with the same force and effect as if made or performed on the day named in the contract.

**Section 27.—HOLIDAYS IN CALIFORNIA.**—The following are legal holidays in the State of California: Every Sunday, the first day of January, twelfth day of February, to be known as Lincoln Day, twenty-second day of February, thirtieth day of May, fourth of July, ninth day of September, first Monday in September, twelfth day of October, to be known as Columbus Day, twenty-fifth day of December, every day on which an election is held throughout the state, and every day appointed by the president of the United States or by the governor of this state for a public fast, thanksgiving or holiday.

If the first day of January, twelfth day of February, twenty-second day of February, the thirtieth day of May, the fourth day of July, the ninth day of September, the twelfth day of October or the twenty-fifth day of December falls upon a Sunday, the Monday following is a holiday.

Every Saturday from twelve o'clock noon until twelve o'clock midnight is a holiday as regards the transaction of business in the public offices of this state, and also in political divisions thereof where laws, ordinances or charters provide that public offices shall be closed on holidays; provided, this shall not be construed to prevent or invalidate the issuance, filing, service, execution or recording of any legal process or written instrument whatever on such Saturday afternoons.

.Act of the Legislature, approved March 20, 1917.

## AGREEMENTS FOR SALE.

Section 28.—KINDS OF AGREEMENTS FOR SALE.—An agreement for sale is either (1) an agreement to sell, (2) an agreement to buy, or (3) a mutual agreement to sell and buy. The difference between a sale and an agreement for sale is, that in a sale the subject of the contract becomes the property of the buyer as soon as the contract is concluded, while in an agreement for sale the title to the property remains in the vendor until the contract is executed. An agreement to buy is a contract by which one engages to accept from another and pay a price for the title to a certain thing. An agreement to sell is a contract by which one engages, for a price, to transfer to another the title to a certain thing. An agreement to sell and buy is a contract by which one engages to transfer the title to a certain thing to another, who engages to accept the same from him and to pay a price therefor. Any property which, if in existence, might be the subject of sale, may be the subject of an agreement for sale, whether the property itself is then in existence or not.

Civil Code, Sections 1726, 1727, 1728, 1729, 1730.

Section 29.—AGREEMENT TO SELL REAL PROPERTY.—An agreement to sell real property binds the seller to execute a conveyance in form sufficient to pass the title to the property. No agreement for the sale of real property, or any interest in real property, is valid, unless the agreement, or some note or memorandum of its terms, be in writing and subscribed by the party to be charged or his agent. If the agreement, or the note or memorandum of it, is subscribed by the agent of the party, it is necessary to the validity of the instrument that the agent's authority from his principal shall be in writing, also.

Civil Code, Sections 1731, 1741.

Section 30.—FORM OF AGREEMENT TO SELL REAL PROPERTY.—Agreements to sell real property are usually pre-



pared in the form of a bond for a deed. The following form will be sufficient under the laws of California:

### AGREEMENT FOR SALE OF REAL ESTATE.—

This Agreement, made and entered into the..... day of....., 19....., between....., of the County of....., State of California, the party of the first part, and ..... of the same place, the party of the second part, witnesseth:

That the said party of the first part, in consideration of the covenants and agreements on the part of the said party of the second part hereinafter contained, agrees to sell and convey unto the said party of the second part, and said second party agrees to buy, all those certain lots or parcels of land, situate in the County of..... State of California, bounded and described as follows, to-wit: .....

(Here insert description of property.)

for the sum of.....Dollars, lawful money of the United States; and the said party of the second part, in consideration of the premises, agrees to pay to the said party of the first part, the said sum of.....Dollars, in gold coin of the United States, at the times and in the amounts as follows, to-wit: .....

(Here insert terms of payments agreed upon.)

It is agreed that all deferred payments shall bear interest at the rate of.....per cent per annum, payable semi-annually.

And the said party of the second part agrees to pay all State, City, and County taxes, or assessments of whatsoever nature, which are or may become due on the premises above described.

In the event of a failure to comply with the terms hereof by the said party of the second part, the said

party of the first part shall be released from all obligation in law or equity to convey said property, and the said party of the second part shall forfeit all right thereto.

Time is of the essence of this contract.

And the said party of the first part, on receiving such payment, at the time and in the manner above mentioned, agrees to execute and deliver to the said party of the second part, or to his assigns, a good and sufficient deed to the premises herein described, free and clear of encumbrances.

And it is understood that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators, and assigns of the respective parties hereto.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the day and year first above written.

.....(Seal.)

.....(Seal.)

(If the above agreement is intended to be recorded, it must be acknowledged.)

Section 31.—OPTION TO BUY REAL PROPERTY.—The owner may give another person an option to buy his property, the purchase then depending upon the mere will of the person receiving the option. The holder of an option is not bound to take the property, but the owner who signed the option is bound to sell, if he is notified, before the option expires, of the intention of the holder to accept the condition of the option. If the holder of the option elects to take the property, he must notify the owner, before the time stated in the option expires, that he will pay the price fixed and demand a deed to the property. Before the time expires, the option holder should tender the price and demand his deed. If the owner refuses to make a deed, when the money is tendered, the courts can be called upon to enforce the option and compel the execution of a good and sufficient conveyance.

Section 32.—FORM OF OPTION.—The following is a form of an option to be used in this State:

## AGREEMENT FOR SALE OF REAL ESTATE.---

For the consideration of.....Dollars,  
to me in hand paid, the receipt of which is hereby ac-  
knowledged, I hereby agree to sell to.....  
or assigns, at any time within.....days  
from the date hereof, the following-described real estate,  
situate in the County of....., State of California,  
to-wit: .....

.....  
(Here describe the property.)

.....  
for the sum of.....Dollars, payable  
as follows, to-wit: .....

.....  
(Here insert terms agreed upon.)

.....  
I will furnish the said.....  
within.....days from date, a complete and accu-  
rate Abstract of Title to said land.

Time is of the essence of this agreement.

I have received from said.....  
.....the sum of .....Dollars  
as a deposit, which I will credit him with on the purchase  
price, should he complete the purchase; otherwise, I am  
to retain the said.....Dollars, for  
my own use, as liquidated damages.

In witness whereof I have hereunto set my hand and  
seal this.....day of .....19.....  
.....(Seal.)

Section 33.—AGREEMENT TO SELL PERSONAL PROPERTY.  
If an agreement is made to buy or sell personal prop-  
erty, and the price is two hundred dollars or over, the  
agreement is not valid unless the agreement itself, or  
some note or memorandum giving its terms, is in writing,  
and subscribed by the party to be charged or his agent.  
There is an exception to the law, which is where an agree-  
ment is made to manufacture a thing, from materials to  
be furnished.

Civil Code, Sections 1739, 1740.

Section 34.—FORM OF AGREEMENT TO SELL PERSONAL PROPERTY.—The following is a sufficient form of agreement to sell personal property:

AGREEMENT FOR SALE OF PERSONAL PROPERTY.—This Agreement, made the.....day of....., 19....., between....., of the County of..... State of California, the party of the first part, and....., of the same place, the party of the second part, witnesseth:

That the said..... the party of the first part, for the consideration hereinafter mentioned, agrees to sell to the said....., the party of the second part, the following-described personal property, situate in the County of....., State of California, to-wit: .....

(Here describe the property.)

said property to be delivered to said party of the second part, at....., on or before the..... day of....., 19.....

In consideration whereof, the said....., the party of the second part, agrees to pay to the party of the first part the sum of..... Dollars, gold coin of the United States, on the said..... day of....., 19....., or sooner on the delivery of said property as aforesaid.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the day and year first above written.

.....(Seal.)

.....(Seal.)

(If agreement is to be recorded, it must be acknowledged.)



## SALE OF PERSONAL PROPERTY

**Section 35.—WHEN GOODS SOLD MUST BE DELIVERED.**—One who sells personal property, whether it was in his possession at the time of sale or not, must put it into a condition fit for delivery, and deliver it to the buyer within a reasonable time after demand. This rule will not apply in some cases, however, where the seller has a lien on the property. Until the seller does put the goods into a condition fit for delivery, the title does not pass. Title does not pass when the property sold has not been identified, nor when something remains to be done for the purpose of ascertaining the price, as by weighing, measuring, or testing the goods, where the price is to depend upon the quantity or quality of the goods. The property must be delivered within a reasonable time after demand. What is a reasonable time depends upon all the circumstances of the particular transaction.

Civil Code, Section 1753.

**Section 36.—WHERE DELIVERY MUST BE MADE.**—In the absence of an agreement to the contrary, the place where the property is at the time of the agreement of sale is the place of delivery; or if the article is not then in existence, it is deliverable at the place where it is manufactured or produced.

Civil Code, Section 1754.

**Section 37.—WHEN PRICE OF GOODS BOUGHT MUST BE PAID.**—Unless by agreement the price is stipulated to be paid at a different time, the law is that the buyer must pay the price of the thing sold on its delivery, and must take it away within a reasonable time after the seller offers to deliver it. Of course, the buyer and seller may agree upon any terms of payment, contrary to the provisions of the law stated above. After personal property has been sold, and until the delivery is completed, the seller must keep the property without charge until the buyer has had a reasonable opportunity to remove it.



**Section 38.—RIGHT TO INSPECT GOODS BEFORE ACCEPTANCE.**—On an agreement for sale with warranty the buyer has a right to inspect the thing sold, at a reasonable time, before accepting it, and if the seller refuse to permit the buyer to make a reasonable inspection of the thing sold, in a proper manner and at a proper time, the buyer may rescind the contract and refuse to take the goods.

Civil Code, Section 1785.

**Section 39.—EXPENSE OF TRANSPORTATION.**—One who sells personal property must bring it to his own door, or to some other convenient place, for its acceptance by the buyer, but further transportation is at the risk and expense of the buyer.

Civil Code, Section 1755.

**Section 40.—BUYER'S DIRECTIONS AS TO MANNER OF SENDING THINGS SOLD.**—If a seller agrees to send the thing sold to the buyer, he must follow the directions of the latter as to the manner of sending, or it will be at his own risk during its transportation. Therefore, if the buyer directs that the goods be shipped by a certain line or lines of carriers, the seller, if he desires to avoid the risk of transportation, must obey the buyer's directions. If he follows such directions, the transportation is at the risk of the buyer. Also, if there are no special directions by the buyer as to the manner of shipment, and the seller uses ordinary care in forwarding the goods, the transportation is at the buyer's own risk.

Civil Code, Section 1757.

**Section 41.—THE BULK LAW.**—This law provides that the sale, transfer, or assignment of a stock in trade (or of such a quantity of a stock in trade as to be substantially the whole thereof), in bulk, is to be conclusively presumed fraudulent and void, as against the existing creditors of the vendor, unless notice is first given by the vendor.

Section 41, page 80, "Business Law for Business Men"—THE BULK LAW—On page 81 make the third sentence, now reading, "the sale shall in no event occur within five days of the date when the notice is recorded" to read as follows: "The sale shall in no event occur within seven days of the date when the notice is recorded."



The notice must be in writing, and must be recorded in the county where the stock of goods is located, at least seven days prior to the sale or transfer. If the stock is located in two or more counties, the notice must be recorded in each county; for instance, if the vendor has a store in Sonoma County and a store in Mendocino County, and intends to sell or transfer the stock in both, he must file his notice in the office of the County Recorder in each county. The required notice must, to be legal, be in writing, and must state the name and address of the vendor, transferor, or assignor; the name and address of the intended vendee, transferee, or assignee; a general statement of the character of the property or merchandise intended to be sold, transferred, or assigned; the time and place of the payment of the purchase price agreed upon; or, if the intended sale is to be at public auction, the notice must state that fact in addition, with the time, terms, and place of such sale. The sale shall in no event occur within five days of the date when the notice is recorded. The above law does not apply to the sale of goods in the ordinary course of trade and in the usual method of business. It is intended only to protect the wholesaler against the sale or transfer or assignment by the retailer of his stock of goods before they are paid for by him. The effect of the law is this: If a stock is sold without the notice, the wholesaler can follow the goods, and recover from the vendee whatever damages he has sustained by reason of the fraudulent sale, transfer, or assignment; and if the notice is given, the wholesaler will have an opportunity to protect himself by suit and attachment of the property within the five days. The law does not apply to a case where the debtor makes an assignment of the property for the benefit of creditors generally, nor does it apply to any sale, transfer, or assignment of any property which is by law exempt from execution. For a list of property exempt from execution, see under the head of "Attachments."

Statutes of 1917, page 255.



Section 42.—FORM OF NOTICE OF SALE OF STOCK OF GOODS.—

Notice is hereby given that.....  
 residing at ....., vendor,  
 has sold to ....., vendee,  
 residing at ....., all that  
 property or merchandise belonging to the vendor now lo-  
 cated at ....., and particularly  
 described as follows, to-wit: A stock of groceries (or  
 other merchandise, describing it) now in the store at  
 No.....Howard Street, in the City and County of  
 San Francisco, State of California; that the purchase  
 price agreed upon is the sum of.....Dollars,  
 and that the said agreed purchase price will be paid by  
 the vendee to the vendor on the.....day of  
 ....., 19....., at No.....Street, City  
 and County of San Francisco, State of California; that  
 the name of the vendor is.....,  
 and that he resides at ....., and  
 that the name of the vendee is.....,  
 and he resides at .....

Vendor.

Subscribed and sworn to before me this.....day  
 of ....., 19.....

Notary Public in and for the City and County  
 of San Francisco, State of California.

Section 43.—BILL OF SALE.—A bill of sale need not be  
 in any particular form to be valid. It is not essential to  
 its validity that it be recorded, although it may be for  
 the best interests of all parties that it should be filed for  
 record. A bill of sale is not required to be acknowledged,  
 if it is not to be recorded; but it must be acknowledged, if  
 it is to be recorded.

Section 44.—FORM OF BILL OF SALE.—The following is  
 a form of bill of sale:

## KNOW ALL MEN BY THESE PRESENTS, That I,

.....  
 of the County of....., State of California, the  
 party of the first part, for and in consideration of the sum  
 of.....Dollars, gold coin of the United  
 States of America, to me in hand paid by.....

....., of....., the party  
 of the second part, the receipt whereof is hereby acknowl-  
 edged, do by these presents grant, bargain, sell, and con-  
 vey unto the said party of the second part, his executors,  
 administrators, and assigns, the following described per-  
 sonal property: .....

(Here describe property sold.)

.....  
 To have and to hold the same to the said party of the  
 second part, his executors, administrators, and assigns  
 forever. And I do for myself, my heirs, executors, and  
 administrators, covenant and agree to and with the said  
 party of the second part, his executors, administrators,  
 and assigns, to warrant and defend the sale of said prop-  
 erty, goods, and chattels hereby made, unto the said party  
 of the second part, his executors, administrators, and  
 assigns, against all and every person and persons, whom-  
 soever, lawfully claiming or to claim the same.

In witness whereof, the said party of the first part has  
 hereunto set his hand and seal, the.....day  
 of....., 19.....

.....(Seal.)

Section 45.—ADULTERATED, MISLABELED OR MISBRANDED  
 FOODS AND LIQUORS.—It is unlawful to brand or label an  
 imitation under the distinctive name of another article of  
 food; or, to label, brand, or color, so as to deceive or mis-  
 lead a purchaser; or, to put up a domestic product and  
 label it as a foreign product; or, to fail to state on pack-  
 ages the weight or measure, plainly and correctly, when  
 goods are so put up or offered for sale; or, if the label  
 on package goods contains a false or misleading state-  
 ment regarding the ingredients or the substance con-  
 tained therein; or, if the goods put up are an imitation

or adulteration, or offered for sale under a false name or designation.

Act of the Legislature, approved February 22, 1909.

The law provides a penalty for its violation, a fine of not less than five nor more than five hundred dollars, or imprisonment in the county jail not exceeding six months, or both such fine and imprisonment.

Food found to be adulterated, mislabeled or misbranded may be ordered destroyed by any court or judge.

No dealer can be prosecuted under the provisions of this act, when he can establish a guaranty signed by the wholesaler, jobber, manufacturer or other party residing in the United States from whom he purchased such article, to the effect that the same is not adulterated, mislabeled or misbranded within the meaning of the law, and can also establish by satisfactory evidence that the article sold by him was mislabeled and that at the time of making such sale he was not aware of that fact. Said guaranty, to afford protection, must contain the name and address of the party or parties making the sales of such article to said dealer, and an itemized statement showing the articles purchased; or a general guaranty may be filed with the secretary of the United States department of agriculture by the manufacturer, wholesaler, jobber or other party in the United States and be given a serial number, which number shall appear on each and every package of goods.

Act of the Legislature, approved April 26, 1911.

The standard of purity of food and liquor shall be that published in circular number nineteen, the food inspection decisions and the service and regulatory announcements of the bureau of chemistry of the United States department of agriculture. Nothing in this section contained shall authorize or permit any adulteration of any food or liquor because the standard of purity of such food or

liquor shall not be proclaimed by the secretary of the United States department of agriculture.

When an examination or analysis of the directors of the state laboratory shows that any provisions of this act have been violated, notice of that fact, together with a copy of the certificate of the findings, shall be furnished to the party or parties from whom the sample was obtained, or who executed the guarantee, as provided in this act, and a day shall be fixed by the secretary of the state board of health, at which said parties may be heard before the state board of health, or before any two members thereof and the secretary. The hearing shall be held at such place as the state board of health or its secretary may designate, and at least fifteen days' notice thereof shall be served upon the party complained of. These hearings shall be private and confined to questions of fact. Parties interested therein may appear in person or by attorney and may propound interrogatories and submit oral or written evidence to show any fault or error in the findings made by the director of the state laboratory. If the examination or analysis be found correct, or if the party or parties fail to appear at such hearing, after notice duly given as provided herein, the secretary of the state board of health shall forthwith transmit a certificate of the facts so found to the district attorney of the county in which said adulterated, mislabeled or misbranded food was found. No publication as in this act provided shall be made until after said hearing is concluded.

Act of the Legislature, approved April 30, 1919;  
in effect July 22, 1919.

Section 46.—COLD STORAGE EGGS AND BUTTER.—Every person, firm, company or corporation, who sells or offers to sell any cold storage eggs or butter as fresh eggs or butter, or by any means whatever represents the same to be fresh eggs or butter, is guilty of a misdemeanor.

Cold storage eggs or butter, that have been in storage



for a longer period than three months, must have stamped, marked or branded upon all sides of the receptacle holding the same, in black face letters two inches in length, the period of time during which the same have been in cold storage. Any person, firm, company or corporation selling or offering for sale any cold storage eggs or butter must display in a conspicuous place in the sales room the sign, in black face letters not less than six inches in length upon a white ground, "Cold Storage Eggs or Butter Sold Here." The penalty for violation of this provision is imprisonment in the county jail for a term not exceeding six months or a fine of two hundred and fifty dollars or both.

All butter sold as certified butter must be conspicuously marked with the name of the commission certifying it.

Statutes and Amendments, 1911, pages 285, 356, 382.

Section 47.—EGGS IN TRANSIT MORE THAN THIRTY-ONE DAYS.—For the purpose of this act the words, "person, firm, company or corporation," shall include wholesalers, retailers, jobbers, and every person, firm, company or corporation owning, operating or conducting any place of business where eggs are sold or offered for sale.

Every person, firm, company or corporation who sells, offers for sale, or has in his or their possession for sale, or consigns, ships or presents to any dealer, commission merchant, consumer, or other person, any egg or eggs which said egg or eggs is or were produced at any place requiring thirty-one days or more to transport the eggs to the selling point, shall, before so doing, cause to be stamped, marked or branded upon the container thereof in black-faced letters not less than one-half of an inch in height the word "storage."

Every person, firm, company or corporation selling or offering for sale any eggs which were produced at any place requiring thirty-one days or more to transport the



Section 47, page 86, "Business Law for Business Men"—EGGS IMPORTED FROM FOREIGN COUNTRIES—All eggs, powdered eggs, and egg products imported into the State of California from foreign countries, shall be sold subject to inspection by the State Board of Health. The State Board of Health must inspect such eggs and issue a permit for their sale, if found fit for human consumption. A label must be affixed to the container reading, "Foreign Eggs," "Foreign Powdered Eggs," or "Foreign Egg Products," "Inspected (inserting the date) by California State Board of Health." All such foreign eggs, foreign powdered eggs and foreign egg products shall be sold only from the original containers. Any person, firm or corporation violating any of the provisions of this act or any rules and regulations made pursuant to the provisions of this act by the State Board of Health shall, upon conviction, be punished for the first offense by a fine not exceeding five hundred dollars (\$500), and for the second offense by a fine not exceeding one thousand dollars (\$1,000), or by an imprisonment for not more than ninety (90) days, or by both such fine and imprisonment.

Act of the Legislature of California, approved June 3, 1921; in effect August 3, 1921.



eggs to the selling point, prior to the date of sale or offering for sale, shall display in a conspicuous place in his or their public salesroom a sign which shall not be less than one foot in height and six feet in length, bearing the words "storage eggs sold here" in black-faced letters not less than six inches in height and one inch in width upon a white ground.

Every person, firm, company or corporation who receives eggs that have been produced at any place requiring thirty-one days or more to transport the eggs to the selling point, prior to their sale or offering for sale, shall, immediately thereafter, report to the state board of health the number of eggs received, the date when received and the place where such eggs were produced, and the name of the person, firm, company or corporation to whom sold.

It shall be the duty of the state board of health to enforce the provisions of this act, and to that end the said board may make necessary rules and regulations.

Every person, firm, company or corporation who shall fail to comply with any of the provisions of this act is guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail for not more than six months; or by a fine of not more than two hundred dollars, or by both such fine and imprisonment in the discretion of the court.

Statutes of 1917, Chapter 173.

Section 48.—SANITARY REGULATION OF FOOD PRODUCING ESTABLISHMENTS.—The law provides as follows:

"Every building, room, basement or cellar, occupied, or used as a bakery, confectionery, cannery, packing-house, slaughterhouse, restaurant, hotel, grocery, meat market, or other place or apartment, used for the production, preparation for sale, manufacture, packing, storage, sale or distribution of any food, shall be properly lighted, drained, plumbed and ventilated, and conducted with strict regard to the influence of such conditions upon the health of the operatives, employees, clerks or other per-

sons therein employed, and the purity and wholesomeness of the food therein produced, kept, handled or sold; and for the purpose of this act the term 'food' shall include all articles used for food, drink, confectionery or condiment, whether simple or compound, and all substances and ingredients used in the preparation thereof.

"The floors, sidewalls, ceilings, furniture, receptacles, utensils, implements and machinery of every establishment or place where food is manufactured, packed, stored, sold or distributed, shall at no time be kept in an unclean, unhealthful or unsanitary condition; and for the purposes of this act, unclean, unhealthful and unsanitary conditions shall be deemed to exist if food in the process of manufacture, preparation, packing, storing, sale or distribution is not securely protected from flies, dust, dirt, unsanitary conditions, and as far as may be necessary, by all reasonable means from all other foreign or injurious contamination; and if the refuse, dirt, and the waste products subject to decomposition and fermentation incident to the manufacture, preparation, packing, storing, selling and distributing of food, are not removed daily; and if all trucks, trays, boxes, baskets, buckets, and other receptacles, chutes, platforms, racks, tables, shelves, and all knives, saws, cleavers, and all other utensils, receptacles, and machinery, used in moving, handling, cutting, chopping, mixing, canning, and all other processes used in the preparation of food, are not thoroughly cleaned daily; and if the clothing of operatives, employees, clerks, and other persons therein employed, is unclean, or if they dress or undress, or leave or store their clothing therein.

"The sidewalls and ceilings of every bakery, confectionery, hotel and restaurant kitchen, shall be well plastered, or ceiled, with metal or lumber, or shall be oil painted or kept well lime washed, or otherwise kept in good sanitary condition; and all interior woodwork of every bakery, confectionery, hotel and restaurant kitchen, shall be kept well oiled or painted with oil paint, and be

kept washed clean with soap and water or otherwise kept in a good sanitary condition; and every building, room, basement or cellar, occupied or used for the preparation, manufacture, packing, storage, sale or distribution of food, shall have an impermeable floor, made of cement or tile laid in cement, brick, wood or other suitable, non-absorbent material which can be flushed and washed clean with water.

“The doors, windows and other openings of every food producing or distributing establishment, where practicable, shall be fitted with stationary or self-closing screen doors and wire window screens, of not coarser than fourteen mesh wire gauze.

“Every building, room, basement or cellar, occupied or used for the preparation, manufacture, packing, canning, sale or distribution of food, shall have convenient toilet or toilet rooms, separate and apart from the room or rooms where the process of production, manufacture, packing, canning, selling or distributing, is conducted. The floors of such toilet rooms shall be of cement, tile laid in cement, wood, brick or other non-absorbent material, and shall be washed and scoured daily. Such toilets shall be furnished with separate ventilating pipes or flues, discharging into soil pipes, or on the outside of the building in which they are situated. Lavatories and washrooms shall be adjacent to toilet rooms, and shall be supplied with soap, running water and towels, and shall be maintained in a clean and sanitary condition. Operatives, employees, clerks and all persons who handle the material from which food is prepared, or the finished product, before beginning work and immediately after visiting a toilet or lavatory shall wash their hands and arms thoroughly in clean water.

“Cuspidors, for the use of operatives, employees, clerks and other persons, shall be provided, and each cuspidor shall be emptied and washed out daily with disinfectant solution, and not less than five ounces of such solution shall be left in each cuspidor while in use. No



operative, employee, clerk or other person, shall expectorate or discharge any substance from his nose or mouth, on the floor or interior side wall of any building, room, basement, or cellar where the production, manufacture, packing, storing, preparation or sale of any food is conducted.

“No person shall be allowed to, nor shall be, reside or sleep in any room of a bake shop, public dining-room, hotel or restaurant kitchen, confectionery, or other place where food is prepared, produced, manufactured, served or sold.

“No employer shall require, permit or suffer any person to work, nor shall any person work, in a building, room, basement, cellar, place or vehicle, occupied or used for the production, preparation, manufacture, packing, storage, sale, distribution or transportation of food, who is afflicted or affected with any venereal disease, small pox, diphtheria, scarlet fever, yellow fever, tuberculosis, consumption, bubonic plague, Asiatic cholera, leprosy, trachoma, typhoid fever, epidemic dysentery, measles, mumps, German measles, whooping-cough, chicken pox, or any other infectious or contagious disease.

“The members of the State Board of Health, inspectors and agents, appointed by said board, and all local health officers and inspectors, shall have full power at all times to enter every building, room, basement, cellar, or any place occupied or used, or suspected of being occupied or used, for the production, manufacture, preparation, storage, sale or distribution of food, and to inspect the premises and all utensils, implements, receptacles, fixtures, furniture and machinery used as aforesaid, and if, upon inspection, any such building, room, basement, cellar, or any such place, vehicle, employer, operative, employee, clerk, driver, or other person, is found to be in violation or violating any of the provisions of this act, or if the production, preparation, manufacture, packing, storing, sale or distribution of food is being conducted in a manner detrimental to the health of the employees or

operatives or to the character or quality of the food therein being produced, manufactured, packed, stored, sold, distributed or conveyed, the officer or inspector making the examination shall at once make a written report of the same to the District Attorney of the county, who shall prosecute all persons violating any of the provisions of this act, and also to the State Board of Health. The State Board of Health, from time to time, as in its discretion it may determine, may publish such reports in its monthly bulletins.

“All buildings, rooms, basements, cellars, and other places and things, kept, maintained, or operated, or which are, in violation of the provisions of this act or any of them, and all food produced, prepared, manufactured, packed, stored, kept, sold, distributed or transported, in violation of the provisions of this act or any of them, are hereby declared to be public nuisances, dangerous to health. Such nuisances may be abated or enjoined, in an action brought for that purpose by the local or State Board of Health, or they may be summarily abated in the manner provided by law for the summary abatement of public nuisances dangerous to health.

“Any person, firm or corporation, whether as principal or agent, employer or employee, who violates any of the provisions of this act shall be guilty of a misdemeanor, and each day that conditions or actions, in violation of this act, shall continue, shall be deemed to be a separate and distinct offense, and for each offense, upon conviction, he shall be punished by a fine of not less than twenty-five dollars, nor more than five hundred dollars, or shall be imprisoned in the county jail for a term not exceeding six months, or by both such fine and imprisonment.”

Act of the Legislature, approved March 6, 1909.

Section 49.—POISONOUS CONFECTIONERY.—It is unlawful to manufacture or offer for sale any confectionery containing terra alba, barytes, talc, chrome yellow, or other mineral substance or poisonous color or flavor, or other

ingredient deleterious or detrimental to health, or any vinous, malt, or spirituous liquor or compound or narcotic drug.

Act of the Legislature, approved March 13, 1909.

Section 50.—IMITATION MILK.—For the purposes of this act certain manufactured substances, certain mixtures and compounds shall be known and designated as “imitation milk,” namely: (a) any mixture or compound composed of skim milk or condensed, evaporated or powdered skim milk and any edible oil or fat other than natural milk fat, whether with or without any other ingredient or ingredients; (b) any mixture or compound made in imitation or semblance, or having the appearance or semblance, of milk or condensed or evaporated milk, or when so made or having such appearance or semblance calculated or intended, whether by intent of the compounder or other person, or by reason of the appearance or other characteristic of the mixture or compound, for use or disposition as or for milk, or as or for condensed or evaporated milk, or to induce its purchase, or use as or for milk or condensed or evaporated milk.

(a) *Manufacture and Sale of Imitation Milk.*—No person by himself, his agents or servants shall render, manufacture, sell, offer for sale, expose for sale, or have in his possession with intent to sell or to use, or to serve to patrons, customers, boarders or inmates of any hotel, dwelling-house, restaurant, public conveyance or boarding house, any article, product or compound made wholly or in part, out of any imitation milk; provided, that nothing in this section shall be construed to prohibit the manufacture or sale, under regulations hereinafter provided, of imitation milk, of substances or compounds that may be used as imitation milk, of a separate and distinct character not resembling milk or condensed or evaporated milk, and in such a manner as will advise the purchaser and consumer of its real character, colored or containing ingredients that cause it to look unlike pure whole cow's

milk or the condensed or evaporated produce made therefrom; and provided, further, it is not adulterated within the meaning of this act; and provided, further, that nothing in this act shall be construed to prevent or prohibit the manufacture, sale, or use, for cooking purposes, of imitation milk as defined by section one of this act.

(b) *Imitation Milk to be Labeled.*—Each person, who by himself, or another, lawfully manufactures any imitation milk, or any substitute that may be used as and substituted for milk or condensed or evaporated milk, shall mark the same by printing, stamping or stenciling upon the top, if the top be of sufficient size and upon the sides of each case, box, carton, or other package, in which that article or substance shall be kept, and in which it shall be removed from the place where it is produced or put in a clear manner, in the English language, the words, “imitation milk,” in printed letters in plain roman type, each of which shall not be less than one inch in height and one-half inch in width, and in addition to the above shall prepare a statement, printed in plain roman type, of a size not smaller than pica, stating in the English language its name, and the name and address of the manufacturer, the name of the place where manufactured or put up, and also the name and actual percentages of the various ingredients used in the manufacture of such imitation milk; and shall place a copy of said statement within and upon the contents of each case, box, carton, or other package, and next to that portion of each case, box, carton, or other package as is commonly and most conveniently opened, and in addition thereto shall label each bottle, can, container, or other package containing imitation milk with the words “imitation milk” printed in black-face plain roman capital letters of a size not less than twelve point, and said words shall appear upon the main or principal label of said bottles, cans, containers, or other packages containing any imitation milk, and in addition thereto said main or principal label shall contain or bear the words: “Not suitable for infant food,”



in plain legible type.

(c) *Adulteration*.—Imitation milk, not condensed or evaporated, shall be deemed adulterated within the meaning of this act if it contains less than three per cent of edible fats, or oils, and imitation milk, if evaporated or condensed, shall be deemed adulterated within the meaning of this act if it contains less than seven and eight-tenths per cent of edible fats or oils.

(d) *Display of Sign by Restaurants*.—No keeper or proprietor of any bakery, hotel, boarding house, restaurant, saloon, lunch counter, or any place of public entertainment, and no person having charge thereof, or employee thereat, and no employer when such board is furnished as compensation, or part of the compensation of any employee, shall place before any patron or employee for use as food, any imitation milk, unless there shall be displayed in a prominent place in said bakery, hotel, boarding house, restaurant, saloon, lunch counter, or other place of public entertainment in each room where meals are served, a sign bearing the words: "Imitation milk used and served here," in black-faced letters and not less than four inches in length upon a white ground.

(e) *License for Manufacture and Sale of Imitation Milk*.—No person, firm or corporation shall engage in the business or occupation of manufacturing, selling, dealing, or in furnishing imitation milk, without first having applied for and obtained a license so to do as hereinafter provided. Any person, firm or corporation dealing in or engaged in the business or occupation of manufacturing, selling, dealing in or furnishing to his, its or their patrons, imitation milk, as in this act defined shall first make application each year to the state dairy bureau for a license, and upon payment of license fee of the amount mentioned herein to the state dairy bureau, said bureau shall issue to the applicant a license. All such licenses shall contain the following proviso: provided, that this license does not authorize the holder thereof to manufac-



ture, sell, deal in or furnish any imitation milk and similar substances that may be used as a substitute for milk or condensed or evaporated milk which resembles in appearance pure whole cow's milk, or the condensed or evaporated product made therefrom. All such licenses shall expire on June thirtieth of each year, and may be issued in periods of one year or less than one year, on payment of a proportionate part of the license fee, provided that no license shall be issued for a period of less than three months. The fee for issuing said license to said manufacturers, of any of the said substances within this state shall be one hundred dollars; for issuing to wholesale dealers in, or importers or agents for importers, of any of said substances the fee shall be fifty dollars; for issuing to retail dealers in any of said substances the fee shall be five dollars; and for issuing to the keeper of any hotel, restaurant, boarding house, and any other place where meals are served and payment is received therefor, either immediately or by the day, week or month, the fee shall be two dollars. The term "wholesale dealer" as used in this section includes all persons, firms or corporations who sell any of said substances in quantities of one full case or more at a time or in the same transaction. The term "retail dealer" includes all persons who sell only in quantities of less than one case. All licenses while in force shall be kept conspicuously displayed in the places of business of the party or parties to whom they have been issued.

It shall be unlawful for any person, firm or corporation to manufacture, buy, sell, deal in or furnish to his, its or their patrons, or to have in their possession, for any purpose whatsoever other than for consumption in his own family, or for transportation in case of a boat or railroad company, or for the purpose of storage in case of a warehouse or cold storage company, any imitation milk or similar substance designed to be used as a substitute for milk or for condensed or evaporated milk without having first applied for and obtained from the

state dairy bureau of the State of California a license herein required.

(f) *Penalty*.—Any person, firm or corporation found guilty of violating any of the provisions of this act shall be punished by a fine of not less than fifty dollars, nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment.

Act of the Legislature, approved April 15, 1919;  
in effect July 22, 1919.

Section 51.—**RULES FOR MARKETING DAIRY PRODUCTS.**—The following rules and standards must be observed by all persons, firms or corporations engaged in the preparation of dairy products for market or delivery thereto:

(1) The owner's name, or other identification mark, the nature of which shall be made known to the dairy inspectors, shall appear permanently and in a conspicuous place on or be attached to every milk or cream bottle, can or container.

(2) All milk, cream and ice cream cans, bottles and containers shall be kept clean and shall be thoroughly washed and sterilized after each using.

(a) *Standards for Carriers*.—All carriers of dairy products, whether producer, gratuitous private carrier other than the producer, private carrier for hire, or common carrier, in transporting milk and cream shipping containers shall observe and maintain the following standard:

(1) All cars or other vehicles, while hauling milk or cream, shall be kept clean and all containers shall be so covered as to protect the milk or cream at all times from dust and from the rays of the sun.

(2) All milk or cream cans or other shipping containers, while containing milk, cream, or other dairy products, shall be handled carefully, and kept right end up.

(3) Every vehicle, railway car or boat in which milk or cream is transported shall be kept in a sanitary con-

dition. Every vehicle and every boat transporting milk or cream either shall be enclosed or shall provide canvas covering to protect the milk and cream at all times from the sun or from the outside warm air, except only while taking on or discharging freight. No fowls, fresh meat or other contaminating things shall be kept or carried on top or in close proximity to milk, cream, or other dairy products.

(4) No milk or cream and no empty cans, bottles or other containers shall be hauled in any vehicle for hauling manure or garbage or in any other unclean vehicle, car or boat.

(5) Nothing herein shall be construed to derogate from any powers or authority of the railroad commission of the State of California.

(b) *Rules for Assembled Dairy Products.*—Persons producing or marketing assembled dairy products must conform to the following rules: All the ingredients used in the process of assembling must conform to all the standards of purity set for such ingredients and must have been produced under the same sanitary conditions and regulations required for the production of milk and cream where such products are sold, and such products must be labeled as herein provided for assembled products in imitation of milk, cream and ice cream.

All assembled dairy products to which has been added any condensed or evaporated milk, or any condensed or evaporated skimmed milk, or any dry milk or milk powder or any skimmed milk or skimmed powder or any butter or sweet butter or dairy products that have been produced by the mechanical assembling of any of the natural ingredients of milk or cream, shall be so labeled on each container thereof with the words "Assembled from milk, butter, milk powder, skim milk or other milk products," as the case may be, correctly naming on the label, bill of sale, invoice and bill of fare, all the ingredients used in such assembled goods, in plain letters of the English language at least one-eighth of an inch in

height; and no other names or prefixes shall be used than those by which such ingredients are separately known to the commercial trade.

(c) *Penalties*.—Any person who violates any provision of this act or who directs or knowingly permits an employee to violate any of said provisions, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than twenty-five dollars nor more than two hundred dollars, or by imprisonment in the county jail for not less than ten days nor more than sixty days, or by both such fine and imprisonment.

Any firm, corporation, society or association which violates any of said provisions shall be guilty of a misdemeanor and upon conviction shall be fined as above provided.

In the event an officer, director, manager or managing agent of any firm, corporation, society, or association violates any of the provisions of this act, or directs or knowingly permits any employee to violate any of said provisions, such officer, director, manager or managing agent shall be guilty of a misdemeanor and upon conviction thereof shall be punished by fine or imprisonment or both as above provided; and, in such a case, the firm, corporation, society or association shall also be guilty and upon conviction shall be fined as above provided. One-half of all such fines shall be paid into the state treasury and placed to the credit of the general fund.

Statutes of 1919; in effect July 22, 1919.

Section 52.—OLEOMARGARINE AND IMITATION CHEESE.—Certain manufactured substances, certain extracts, and certain mixtures and compounds, including such mixtures and compounds with butter, milk or cream, shall be known and designated as “oleomargarine,” namely: All substances heretofore known as oleomargarine, oleo, oleomargarine-oil, butterine, lardine, suine, and neutral; all mixtures and compounds of oleomargarine, oleo, oleomargarine-oil, butterine, lardine, suine and neutral; all



lard extracts and tallow extracts; and all mixtures and compounds of tallow, beef-fat, suet, lard, lard-oil, cocoanut-oil, peanut-oil, intestinal fat, and offal-fat made in imitation or semblance of butter, or when so made, calculated or intended to be sold as butter or for butter; or butter substitute; and every article, substance, or compound, other than that produced from pure milk, or cream from the same, made in semblance of cheese, and designed to be used as a substitute for cheese made from pure milk or cream, is hereby declared to be imitation cheese; *provided*, that the use of salt, rennet, and harmless coloring matter for coloring the product of pure milk or cream, shall not be construed to render such product an imitation; and *provided*, that nothing shall prevent the use of pure skimmed milk in the manufacture of cheese.

Statutes of 1919, in effect July 22, 1919.

Section 53.—WEIGHING AND SAMPLING MILK.—It shall be unlawful for any hauler of milk, or cream, or any person, firm or corporation receiving or purchasing milk or cream by weight or test or both, or by measure or test or both, to fraudulently manipulate the weight, measure or test of milk or cream of any person or to take unfair samples thereof, or to fraudulently manipulate such samples. The hauler or other agent shall weigh or measure the milk or cream of each patron accurately and correctly and shall report such weights or measurements accurately and correctly to the creamery or factory. He shall thoroughly mix the milk or cream of each patron by pouring or stirring until such milk or cream is uniform and homogeneous in richness, before the sample is taken from such milk or cream. When the weighing or sampling is done at the creamery, shipping station or factory, the same rule shall apply.

Section 54.—TESTING MILK.—It shall be unlawful for any person, firm or corporation, by himself or as the agent, servant, employee or officer of any person, firm or corporation receiving or purchasing milk or cream on the



basis of the amount of butter fat contained therein, to under-read, over-read or otherwise fraudulently manipulate the Babcock test used for determining the per cent of butter fat in milk or cream, or to falsify the records thereof or to read the test at any other temperature than the correct one, which is one hundred thirty degrees to one hundred forty degrees Fahrenheit, or to pay on the basis of any measurement or weight except the true measurement or weight, which is seventeen and six-tenths cubic centimeters for milk and nine grams or eighteen grams for cream; *provided*, that in all tests for cream the cream shall be weighed into the test bottle. All testing of milk or cream purchased on the basis of the amount of butter fat contained therein, shall be done by a licensed tester who shall supervise and be responsible for the operation of the Babcock test of milk or cream. The license shall be issued to such person by the state dairy bureau whose duty it shall be to examine into the qualifications of all applicants for such license, and every such applicant shall satisfy said bureau of his qualifications and comply with the provisions herein before any license shall be issued to him.

Statutes of 1919; in effect July 22, 1919.

Section 55.—LICENSE TO RECEIVE MILK ON BASIS OF BUTTER FAT CONTAINED.—Every creamery, shipping station, milk factory, cheese factory, ice cream factory, condensory, or any person, firm or corporation receiving or purchasing milk or cream on the basis of butter fat contained therein, shall be required to hold a license so to do. The license shall be issued to such creamery, shipping station, milk factory, condensory, ice cream factory, cheese factory, or person, firm or corporation by the state dairy bureau upon complying with all sanitary laws, rules and regulations of the State of California and upon complying with the provisions of this act and upon payment of a license fee as provided for in this section.

All licenses required herein shall expire on the thirty-

Section 56, page 101, "Business Law for Business Men"—THE BABCOCK TEST—In conducting the Babcock test the fat column in tests on milk in milk bottles shall be read from the extreme bottom of the fat column to the top of the top meniscus; the fat column in tests on cream in cream test bottles shall be read from the extreme bottom of the fat column to the extreme bottom of the top meniscus (when such meniscus in the butterfat is not destroyed by use of a foreign liquid); or from the extreme bottom of the fat column to the plane of separation between the butterfat column and the overlying foreign liquid (when such meniscus in the butterfat column is destroyed by the use of a foreign liquid).

Act of the Legislature of California, approved June 3, 1921; in effect August 3, 1921.



first day of December of each year and the fee for issuing same shall be one dollar for a full year or twenty-five cents for each remaining quarter or fraction thereof. The licenses may be revoked by the state dairy bureau if, after due notice, the licensee fails or has failed to comply with the laws, rules, and regulations under which the license was granted; *provided*, that the provisions shall not apply to individuals, hotels, restaurants, or boarding houses buying milk or cream for private use.

Statutes of 1919; in effect July 22, 1919.

Section 56.—SPECIFICATIONS FOR STANDARD BABCOCK TESTING GLASSWARE.—The term “standard Babcock testing glassware” shall apply to glassware and weights complying to the following specifications: (a) Graduation for milk test bottles. The total per cent graduation shall be eight. The graduated portion of the neck shall have a length of not less than sixty-three and five-tenths millimeters (two and one-half inches) and the graduation shall represent whole per cent, five-tenths per cent, and tenths per cent. The tenths per cent graduation shall not be less than three millimeters in length; the five-tenths per cent graduation shall be one millimeter longer than the tenths per cent graduations, projecting one millimeter to the left; the whole per cent graduations shall extend at least one-half way around the neck to the right and projecting two millimeters to the left of the tenths per cent graduations. Each per cent graduation shall be numbered, the number being placed on the left of the scale. The error at any point of the scale shall not exceed one-tenth per cent.

The neck shall be cylindrical and the cylindrical shape shall extend for at least nine millimeters below the lowest and above the highest graduation mark. The top of the neck shall be flared to a diameter of not less than ten millimeters.

The capacity of the bulb up to the junction of the neck shall not be less than forty-five cubic centimeters. The

shape of the bulb may be either cylindrical or conical with the smallest diameter at the bottom. If cylindrical, the outside diameter shall be between thirty-four and thirty-six millimeters; if conical, the outside diameter of the base shall be between thirty-one and thirty-three millimeters, and the maximum diameter between thirty-five and thirty-seven millimeters. The charge of the bottle shall be eighteen grams. The total height of the bottom shall be between one hundred fifty and one hundred sixty-five millimeters (five and seven-eighths and six and one-half inches).

Two types of bottles shall be accepted as standard cream test bottles, a fifty per cent nine gram long-neck bottle, and a fifty per cent eighteen gram long-neck bottle.

Fifty per cent, nine gram, long-neck bottle: Graduation—The total per cent graduation shall be fifty. The graduated portion of the neck shall have a length of not less than one hundred twenty millimeters (four and three-quarters inches). The graduation shall represent five per cent, one per cent and five-tenths per cent. The five per cent graduations shall extend at least half way around the neck (to the right). The five-tenths per cent graduations shall be at least three millimeters in length and the one per cent graduations shall have a length intermediate between the five per cent and the five-tenths per cent graduations. Each five per cent graduation shall be numbered, the number being placed on the left of the scale.

Neck—The neck shall be cylindrical and of uniform internal diameter throughout. The cylindrical part of the neck shall extend at least five millimeters below the lowest and above the highest graduation mark. The top of the neck shall be flared to a diameter of not less than ten millimeters.

Bulb—The capacity of the bulb up to the junction of the neck shall not be less than forty-five cubic centimeters. The shape of the bulb may be either cylindrical or conical with the smallest diameter at the bottom. If cylindrical



the outside diameter shall be between thirty-four and thirty-six millimeters; if conical, the outside diameter of the base shall be between thirty-one and thirty-three millimeters and the maximum diameter between thirty-five and thirty-seven millimeters.

The charge of the bottle shall be nine grams. All bottles shall bear on top of the neck above the graduations, in plain legible characters, a mark defining the weight of the charge to be used (9 grams).

The total height of the bottle shall be two hundred ten to two hundred thirty-five millimeters (eight and one-fourth to nine and one-quarter inches) and the maximum error in the total graduation or in any part thereof shall not exceed fifty per cent of the volume of the smallest unit of the graduation.

The fifty per cent, eighteen gram, long-neck bottle. The same specifications in every detail as specified for the fifty per cent, nine gram, long-neck bottle, shall apply, with the exception that the charge of the bottle shall be eighteen grams, and the mark defining the weight of the charge placed at the top of the neck shall be eighteen.

The total length of the standard Babcock pipette shall be not more than three hundred thirty millimeters (thirteen and one-fourth inches). Outside diameter of suction tube, six to eight millimeters. Length of suction tube, one hundred thirty millimeters. Outside diameter of delivery tube, four and five-tenths to five and five-tenths millimeters. The length of delivery tube, one hundred to one hundred twenty millimeters. Distance of graduation mark above bulb, thirty to sixty millimeters. Nozzle straight. Delivery seventeen and six-tenths cubic centimeters of water at twenty degrees centigrade in five to eight seconds.

The sensibility of all scales used for weighing cream samples into the test bottles shall be not more than thirty milligrams and the standard weights shall be nine grams and eighteen grams.

In all testing of milk or cream where the same is re-

ceived or purchased upon the basis of the amount of butter fat contained therein the Babcock tester shall be operated at the proper speed, which is as follows:

For tester with diameter of fourteen inches the speed shall be between eight hundred twenty-five and nine hundred seventy-five revolutions per minute.

For tester with diameter of sixteen inches, the speed shall be between seven hundred seventy-five and eight hundred seventy-five revolutions per minute.

For tester with diameter of eighteen inches, the speed shall be between seven hundred seventy-five and eight hundred twenty-five revolutions per minute.

For tester with diameter of twenty inches, the speed shall be between seven hundred twenty-five and seven hundred seventy-five revolutions per minute.

For tester with a diameter of twenty-four inches, the speed shall be between five hundred seventy-five and six hundred twenty-five revolutions per minute.

Statutes of 1919; in effect July 22, 1919.

Section 57.—PASTEURIZED MILK.—No person, firm or corporation shall sell or exchange, or offer or expose for sale or exchange, as and for grade B milk, any milk that does not conform to the following requirements as a minimum; it must be obtained from cows in no way unfit for the production of milk for use by man, as determined by physical examination at least once in six months by a qualified veterinarian under the supervision of the inspecting department. Before pasteurization such milk shall contain less than one million bacteria per cubic centimeter. After pasteurization it shall contain less than fifty thousand bacteria per cubic centimeter.

Milk for pasteurization must be kept at a temperature established by the inspecting department up to the time of delivery to the pasteurization plant and rapidly cooled after pasteurization to a temperature of fifty degrees Fahrenheit or below and so maintained to the time of delivery of the same. Pasteurization shall be by the hold-

Section 57, page 104, "Business Law for Business Men"—PASTEURIZED MILK—PROCESS OF PASTEURIZATION—The process of pasteurization, as applied to milk, skim milk, cream and milk products, hereby is defined to be a process for the elimination therefrom of organisms harmful to human beings, which process shall consist of uniformly heating such milk, skim milk or cream, as the case may be, to a temperature of not less than one hundred forty degrees Fahrenheit and of holding the same at the said temperature for a period of not less than twenty-five minutes, and immediately thereafter of cooling the same to a temperature of not above fifty degrees Fahrenheit; **provided**, that when cream is pasteurized to be used and is used in the manufacture of butter, or when milk is pasteurized to be used and is used in the manufacture of cheese, and where the process of ripening or starting in each case is to be commenced immediately, then it shall not be required that such cream or milk be cooled to a lower degree than is necessary for such ripening or starting. Milk for drinking purposes shall not be heated for more than one hour nor above one hundred forty-five degrees Fahrenheit. Cream that is to be manufactured into butter may be pasteurized by heating above one hundred forty-five degrees Fahrenheit, and when the same is uniformly heated to and held at a temperature above one hundred fifty-one degrees Fahrenheit, the time for holding may be decreased from twenty-five minutes by one minute for each degree of temperature over one hundred fifty-one degrees Fahrenheit.

All pasteurized cream or milk used in the manufacture of pasteurized butter and cheese, respectively, shall be pasteurized at and in the plant where such butter or cheese, as the case may be, is manufactured therefrom. If milk is repasteurized it must not be sold for human consumption. It must be heated to a higher temperature than necessary for pasteurization and delivered in a distinctive container, plainly marked with the words "not suitable for human consumption," in letters not less than one-quarter inch in length and one-twelfth inch in stroke.

Act of the Legislature of California, approved June 3, 1921; in effect August 3, 1921.



ing method at a temperature not less than one hundred forty degrees Fahrenheit; *provided*, that milk for drinking purposes shall not be heated above one hundred forty-five degrees Fahrenheit.

Such pasteurization plant shall be equipped with a self-registering device for record of the time and temperature of pasteurization. Such records shall be kept for two months and be available for inspection by any health department, the state veterinarian or any of his agents, or the state dairy bureau. Pasteurized milk shall be marked with the day of the week of pasteurization and must be delivered to the consumer within forty-eight hours thereafter. If milk is repasteurized, it must not be sold except as not suitable for human consumption; *provided, however*, if graded, cream of any grade shall conform to all the standards set for milk of the same grade, except that the maximum bacteria count for cream shall be not more than three times as great as that of the corresponding grade of milk.

Statutes of 1919; in effect July 22, 1919.

Section 58.—CHEESE AND CHEESE BRANDS.—Every person, firm or corporation, who shall manufacture cheese in the State of California, shall at the place of manufacture, brand distinctly and durably on each and every cheese manufactured, and upon the package or box, when shipped, the grade of cheese manufactured, as follows: "full-cream cheese," or "half-skim cheese," or "skim cheese."

All brands for branding the different grades of cheese shall be procured from the state dairy bureau, and said bureau is hereby directed and authorized to issue to all persons, firms or corporations, upon application therefor, uniform brands, consecutively numbered, of the different grades specified in this section. The state dairy bureau shall keep a record of each and every brand issued, and the name and location of the manufacturer receiving the same. No manufacturer of cheese in the State of Califor-



nia other than the one to whom such brand is issued, shall use the same, and in case of a change of location, the party shall notify the bureau of such change.

The different grades of cheese are hereby defined as follows: First: Such cheese only as shall have been manufactured from pure milk, and from which no portion of the butter fat has been removed by skimming or otherwise, and having not less than fifty per cent of butter fat in its water-free substance, which shall be conspicuously branded as "full-cream cheese." Second: Such cheese only as shall have been made from pure milk, and having not less than twenty-five per cent of butter fat in its water-free substance, which shall be conspicuously branded as "half-skim cheese." Third: Such cheese only as shall have been made from pure skim milk, which shall be conspicuously branded as "skim cheese."

No person or persons, firm, association or corporation shall sell or offer for sale in this state any cheese which is not branded either "full-cream cheese," "half-skim cheese," or "skim cheese," in accordance with its butter fat content.

Statutes of 1917; in effect July 30, 1917.

Section 59.—FALSE ADVERTISEMENTS.—Any person, firm, corporation or association, or any employee thereof, who, with intent to sell, furnish, perform, or in any way dispose of real or personal property, choses in action, merchandise, service, professional or otherwise, or anything of any nature whatsoever offered by such person, firm, corporation or association, or any employee thereof, directly or indirectly, to the public for sale or distribution, or to induce the public, in any manner, to enter into any obligation relating thereto, or to acquire title thereto or any interest therein, shall make, publish, disseminate, circulate, or cause to be made, published, disseminated or circulated, or, in any manner, place, or cause to be placed, before the public in the State of California, in any newspaper, magazine, book, pamphlet, circular, letter, notice,

Section 60, page 107, "Business Law for Business Men"—MATTRESSES—The tag must show, in addition, the quantity of such materials used, expressed in terms of avoirdupois weight; also size of same, expressed in linear measure, clearly indicating the length and breadth thereof, except that tags attached to comforters need state only the percentage of new material and (or) shoddy material, and that no sizes need be marked on same. Whenever the word "felt," as applied to cotton, is used in the said statement concerning any materials, it shall be indicated in said statement whether said felt is "felted cotton" or "felted linters." This shall not apply to comforters.

Any mattress made from more than one new material shall have stamped upon the tag attached thereto the percentage of each material so used. This section shall not apply to comforters.

No provision of this act shall apply to merchandise manufactured for use and sale outside of the State of California, excepting the sterilization of second-hand or shoddy materials.

Act of the Legislature of California, approved May 31, 1921; in effect July 31, 1921.

(a) PILLOWS—No person, firm or corporation shall use or employ in the making, remaking or renovating of any pillow, any second-hand material of any kind unless any and all of such materials have been thoroughly sterilized and disinfected by a reasonable process, approved by the state board of health.

No person, firm or corporation shall directly or indirectly, at wholesale or retail, or otherwise sell, offer or expose for sale, barter or trade, deliver or consign or have in possession with intent to sell, deliver or consign, any pillow that shall not have plainly and indelibly stamped or printed upon the face of a muslin or linen tag not smaller than three inches square securely sewed to the covering thereof, a statement in the English language setting forth the kind or kinds of materials used in making and filling said pillow, and whether or not said materials are in whole or in part second-hand, and the name and address of the manufacturer or vendor or both.

Any pillow made from any second-hand material shall have stamped or printed upon aforesaid tag attached thereto, in type not smaller than twenty-point, the words "second-hand."

Any person, firm or corporation violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars and not to exceed five hundred dollars, or by imprisonment for not less than three months and not exceeding six months or by both such fine and imprisonment.

Act of the Legislature of California, approved May 12, 1921; in effect July 12, 1921.



hand-bill, poster or other publication, or on any billboard, sign, card, label, or other advertising medium, or by means of any electric sign, window sign, show case or window display, or by any other advertising device, or by public outcry or proclamation, or in any other manner or means whatever, an advertisement of any sort regarding such real or personal property, choses in action, merchandise, service or anything so offered to the public, which advertisement shall contain any statement, representation or assertion concerning such real or personal property, choses in action, merchandise, service or anything so offered to the public, or concerning any circumstance or matter of fact connected in any way, directly or indirectly, with the proposed sale, performance or disposition thereof, which statement, representation or assertion is false or untrue, in any respect, or which is deceptive or misleading, and which is known, or which by the exercise of reasonable care should be known, to be false or untrue, deceptive or misleading, by the person, firm, corporation or association making, publishing, disseminating, circulating or placing before the public said advertisement, shall be guilty of a misdemeanor; *provided, however*, that this act shall not apply to any publisher of a newspaper, magazine, or other publication, who publishes said advertisement in good faith, without knowledge of its false, deceptive, or misleading character.

Statutes of 1915; Chapter 634.

Section 60.—MATERIALS IN MATTRESSES.—No person or corporation, by himself or his agents, servants or employees, shall, directly or indirectly, at wholesale or retail, or otherwise, sell, offer for sale, deliver or consign, or have in his possession with intent to sell, deliver, or consign, any mattress that shall not have plainly and indelibly stamped or printed thereon, or upon a muslin or linen tag, not smaller than three inches square securely sewed to the covering thereof, a statement in the English language setting forth the kind or kinds of materials

used in filling the said mattress, and whether the same are in whole or in part, new or old, or second-hand, or shoddy, and the name and address of the manufacturer or vendor thereof, or both.

Any mattress made from more than one new material, shall have stamped upon the tag attached thereto the percentage of each material so used.

Any mattress made from any material of which prior use has been made shall have stamped or printed upon the tag attached thereto in type not smaller than twenty-point the words "second-hand material."

Any mattress made from material known as "shoddy" shall have stamped or printed upon the tag attached thereto in type not smaller than twenty-point the words "shoddy material."

Any person, firm, company, organization or corporation, who shall violate any of the provisions of this act shall be punishable by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for a period of not more than six months, or by both such fine and imprisonment.

Statutes of 1915; Chapter 641.

Section 61.—STORAGE OF EXPLOSIVES.—Magazines in which explosives may lawfully be stored or kept shall be two classes, as follows:

(a) Magazines of the first class shall consist of those containing explosives exceeding one hundred pounds, and shall be constructed wholly of brick, wood covered with iron, or other fireproof material, and must be fireproof, and, except magazines where gunpowder or black blasting powder only is stored, must be bullet proof, and shall have no openings except for ventilation and entrance. The doors of such magazines must be fireproof and bullet proof, and at all times kept closed and locked, except when necessarily opened for the purpose of storing or removing explosives therein or therefrom, by persons lawfully entitled to enter the same. Every such maga-



zine shall have sufficient openings for ventilation thereof, which must be screened in such manner as to prevent the entrance of sparks or fire through the same. Upon each side of such magazine there shall at all times be kept conspicuously posted a sign, with the words, "magazine," "explosives," "dangerous," legibly printed thereon in letters not less than six inches high. No matches, fire or lighting device of any kind except electric light shall at any time be permitted in any such magazines. No package of explosives shall at any time be opened in any magazine. No blasting caps or other detonating or fulminating caps, or detonators, or electric fuzes, shall be kept or stored in any magazine in which explosives are kept or stored, but such caps, detonators or fuzes may be kept or stored in a magazine constructed as above provided which must be located at least one hundred feet from any magazine in which explosives are kept or stored. Magazines in which explosives are kept or stored must be detached and must be located at least one hundred feet from any other structure.

On and after January 1, 1919, the quantity of explosives that may be lawfully had, kept or stored in any magazine shall depend upon the distance that such magazine is situated from buildings, highways, or railroads, and upon the protection afforded by natural or efficient artificial barricades to such buildings, highways or railroads. Whenever any of the quantities given in column one of the quantity and distance table hereinafter set forth is had, kept or stored in any magazine in this state, the distance that any quantity given in column one of said table may be lawfully had, kept or stored from buildings is the distance set opposite said quantity in column two of said table, and the distance that any quantity in column one of said table, may be lawfully had, kept or stored from railroads is the distance set opposite said quantity in column three of said table, and the distance that any quantity given in column one of said table may be lawfully had, kept or stored from highways is the dis-

tance set opposite said quantity in column four of said table. The quantity and distance table governing the keeping or storing of explosives is as follows:

QUANTITY AND DISTANCE TABLE.

Column 1				Column 2	Column 3	Column 4
Quantity that may be lawfully kept or stored from nearest building, highway or railroad				Distance from nearest building, feet	Distance from nearest railroad, feet	Distance from nearest highway, feet
Blasting caps		Other explosives				
Number over	Number not over	Pounds over	Pounds not over			
1,000	5,000	-----	-----	30	20	10
5,000	10,000	-----	-----	60	40	20
10,000	20,000	-----	-----	120	70	35
20,000	25,000	-----	50	145	90	45
25,000	50,000	50	100	240	140	70
50,000	100,000	100	200	360	220	110
100,000	150,000	200	300	520	310	150
150,000	200,000	300	400	640	380	190
200,000	250,000	400	500	720	430	220
250,000	300,000	500	600	800	480	240
300,000	350,000	600	700	860	520	260
350,000	400,000	700	800	920	550	280
400,000	450,000	800	900	980	590	300
450,000	500,000	900	1,000	1,020	610	310
500,000	750,000	1,000	1,500	1,060	640	320
750,000	1,000,000	1,500	2,000	1,200	720	360
1,000,000	1,500,000	2,000	3,000	1,300	780	390
1,500,000	2,000,000	3,000	4,000	1,420	850	420
2,000,000	2,500,000	4,000	5,000	1,500	900	450
		5,000	6,000	1,560	940	470
		6,000	7,000	1,610	970	490
		7,000	8,000	1,660	1,000	500
		8,000	9,000	1,700	1,020	510
		9,000	10,000	1,740	1,040	520
		10,000	20,000	1,780	1,070	530
		20,000	30,000	2,110	1,270	630
		30,000	40,000	2,410	1,450	720
		40,000	50,000	2,680	1,610	800
		50,000	60,000	2,920	1,750	880
		60,000	70,000	3,130	1,880	940
		70,000	80,000	3,310	1,990	1,000
		80,000	90,000	3,460	2,080	1,040
		90,000	100,000	3,580	2,150	1,080
		100,000	200,000	3,800	2,280	1,140
		200,000	300,000	4,310	2,590	1,300

Whenever the building, railroad or highway to be protected is effectually screened from the magazine, where explosives are had, kept or stored, either by natural features of the ground or by an efficient artificial barricade of such height that any straight line drawn from the

top of any side wall of the magazine to any part of the building to be protected, will pass through such intervening natural or efficient artificial barricade, and any straight line drawn from the top of any side wall of the magazine to any point twelve feet above the center of the railroad or highway to be protected will pass through such intervening natural or efficient artificial barricade, the applicable distances given in column two, three and four of the quantity and distance table may be reduced one-half.

Whenever the building, railroad or highway to be protected is effectually screened from the magazine, where explosives are had, kept or stored by a natural barrier which, at any one point thereon, is forty feet or more in height above a straight line drawn from the top of any side wall of the magazine to any part of the building to be protected or to any point twelve feet above the center of the railroad or highway to be protected, which natural barrier has a natural thickness of not less than two hundred feet where the same is intersected by the straight line drawn as aforesaid, then the quantity and distance table shall not be applicable to such magazine.

If at any time the distances from a magazine to a building, highway or railroad be decreased through the construction of a new building, highway or railroad or by any other means, then the amounts of explosives which may be lawfully had, kept or stored in said magazine must be reduced to correspond with the quantity and distance table; *provided*, in the case of a new building, that the same is constructed in good faith for any of the purposes specified in the following paragraph, and not with intent to annoy, harass, oppress or hinder the owner of said magazine.

The term "building" when used in the foregoing table shall be held to mean and include only any building regularly occupied in whole or in part as a habitation for human beings, and any store, church, schoolhouse, railway station or other public place of assembly.

The term "highway" when used in the foregoing table shall be held to mean public streets or public roads, and shall not include roads constructed and maintained by private persons.

The term "railroad" when used in the foregoing table shall be held to mean and include any steam, electric or other railroad that carries passengers or articles of commerce for hire.

The term "efficient artificial barricade" when used in the foregoing shall be held to mean an artificial mound or properly revetted wall of earth of a thickness of not less than three feet. The provisions of this section shall not apply to mining or quarrying operations. Nothing contained in this subsection shall be held to prohibit the keeping or storing of explosives at any explosive manufacturing plant which was actually used in manufacturing explosives prior to the fifteenth day of April, 1917.

Magazines of the second class shall consist of a stout box, and not more than one hundred pounds of explosives shall at any time be kept or stored therein, and, except when necessarily opened for use by authorized persons, shall at all times be kept securely locked. Upon each such magazine there shall at all times be kept conspicuously posted a sign with the words, "magazine," "explosives," "dangerous," legibly printed thereon.

Nothing in this section contained shall be held to prohibit the keeping or storing of explosives in any tunnel, where no person or persons are employed; *provided, always*, that any tunnel so used for the storage of explosives shall have fireproof doors, which must at all times be kept closed and locked, except when necessarily opened for the purpose of storing or removing explosives therein or therefrom, by persons lawfully entitled to enter the same. The door of such tunnel magazine shall at all times have legibly printed thereon the words, "magazine," "explosives," "dangerous."

Act of the Legislature, approved May 2, 1919;  
in effect July 22, 1919,



Section 62, page 113, "Business Law for Business Men"—FRUITS AND VEGETABLES—Some changes in the law have been made by the Legislature of 1921, as follows:

(a) Page 115, referring to "Virtually uniform in size," should now read: "Virtually uniform in size" shall mean in the case of packed fruits a difference in size of the various fruits as follows: Pears, peaches and quinces, a variation of not more than one-half of an inch when measured through widest portion of cross-section; apricots, plums and prunes, a variation of not more than one-fourth of an inch when measured through widest portion of cross-section.

(b) The standard basket for strawberries shall be the dry pint.

(c) The standard grape drum shall contain 2,642 cu. in.

(d) The standard grape keg shall contain 2,642 cu. in. minimum.

(e) Peach size cherry lug depth inside  $4\frac{1}{2}$  inches; width inside,  $11\frac{1}{2}$  inches; length outside,  $11\frac{3}{4}$  inches.

(f) Special fruit lug depth inside, 4 inches; width inside, 14 inches; length outside,  $17\frac{1}{2}$  inches.

(g) The four by twelve by twenty-two and one-half cantaloupe crates may be packed with nine, twelve or fifteen cantaloupes; the four and one-half by thirteen and one-half by twenty-two and one-half may be packed with nine, twelve or fifteen cantaloupes. All irregular cantaloupe packs must be marked in letters not less than one-half inch in height, "Irregular Pack."

(h) Containers in which the fruit in the top layer only is placed in regular, compact arrangement, excepting cherries, berries, and grapes, shall be labeled "face and fill" in lieu of the approximate number of fruits or net weight.

(i) In sub-division (g) page 118, in the first sentence add to the names of grapes, Burger, and Pierce Isabella. Act of the Legislature of California, approved June 3, 1921; in effect August 3, 1921.





**Section 62.—FRUITS AND VEGETABLES—STANDARDS AND STANDARD PACKAGES.**—A law was passed in 1919 to promote the fresh fruit, nut and vegetable industry. The new law is as follows:

**Section 1.** To promote the development of the California fresh fruit, nut and vegetable industry and to prevent deception in fruit or vegetable packages for state or inter-state shipment, there are hereby created and established certain standards and standard packages for apricots, almonds, walnuts, berries, cantaloupes, cherries, grapes, oranges, peaches, pears, plums, prunes, quinces, tomatoes, onions, sweet potatoes and potatoes.

**Sec. 2.** All fresh fruits, nuts and vegetables of the kind specified in section one of this act, except oranges which shall be governed by the provisions of section nine, and except such fruits and vegetables for which special grades shall be established under section three of this act, when being packed, or after packing, or when shipped, delivered for shipment, offered for sale or sold, in any container or subcontainer, shall be mature but not overripe, well colored for the variety and locality, virtually uniform in quality, virtually free from insect and fungous pests, rots, bruises, frost injury, sunburn and other serious defects, and, except in the case of unpacked fruit or vegetables, shall be virtually uniform in size. When packed in layers there shall be approximately the same numerical count in each layer throughout a container or subcontainer having straight sides. In the case of sloping side containers no layer below the top layer shall contain a greater numerical count than the top layer.

(a) *Enforcement by Commissioner of Horticulture.*—**Sec. 3.** The state commissioner of horticulture is hereby empowered, through his deputies and the inspectors of fresh fruit and vegetables of each county in the state, to enforce all the provisions of this act, and to establish

and enforce such grades and grading rules as may be deemed necessary after a thorough investigation has been made of the needs of the particular fruit or vegetable for which grades are contemplated. Such grades and grading rules must, before they become effective, be approved in one or more public meetings attended or represented by at least fifty per cent of the growers and shippers of that locality interested in the industry affected. Such meetings shall be widely advertised in a newspaper published in that locality for at least two weeks prior to the meetings; said meetings shall be presided over by the state commissioner of horticulture, or any of his deputies, and shall, in so far as possible and practicable, be conducted at places that can be conveniently reached by representatives of the affected industry. In like manner the state commissioner of horticulture may provide for standard packages other than those provided for in section six of this act. Grades and grading rules established in accordance with the provisions of this section shall not be modified, nor shall standard packages which have been established be changed during the current shipping season of the fruits or vegetables for which such grades or standard packages were established.

(b) *Exemptions.*—Sec. 4. All fresh fruits or vegetables of the kind specified in this act for use in the manufacture of by-products, shall be exempt from the provisions of this act, and any inspector or deputy inspector of fresh fruits and vegetables may require from the owner or shipper of such fruits or vegetables such proof as he may deem necessary that they will be used in the manufacture of by-products, and shall hold same until satisfactory proof is given.

(c) *Definitions.*—Sec. 5. When used in this act the words herein mentioned shall be defined as follows: "Packages" shall mean any box, basket, barrel, drum, or crate used as a container or subcontainer for fruits or vegetables. "Pack, packing or packed" shall mean

the regular compact arrangement of all or part of the fruit or vegetables in any container or subcontainer used for the purpose of sale or transportation for sale. "Deceptive pack" shall mean any package of fruits or vegetables, which has in the outer layer or the exposed surface fruit or vegetables which are so superior in quality or condition to those in the interior of the package, or the unexposed portion, as to materially misrepresent the entire contents. "Fresh fruit (except oranges) or fresh vegetables" shall mean the fresh product of any tree, vine or plant mentioned in this act. "Mature" shall mean a degree of ripeness fit for shipment. "Virtually uniform in size" shall mean in the case of packed fruits a difference in size of the various fruits as follows: pears, peaches and quinces, a variation of not more than one-quarter of an inch when measured through widest portion of cross section; apricots, plums, prunes, cherries and berries, a variation of not more than one-eighth of an inch when measured through widest portion of cross section. "Virtually free" from insect and fungous pests, rots, bruises, frost injury, sunburn and other serious defects, shall mean that the total defects shall not exceed ten per cent in any one package of fruits or vegetables, and excepting grapes that there shall not be more than three per cent of any one defect. "By-product" shall mean any product manufactured from fresh fruits, fresh vegetables, or their juices. "County" shall include in its meaning a consolidated city and county. "Container" shall mean any box, crate or other package utilized in handling fresh fruit or vegetables. "Subcontainer" shall mean any basket or other receptacle used within a container. "Substantially colored" shall mean at least seventy per cent color.

(d) *Specifications for Standard Containers.*—Sec. 6. Standard containers are hereby established as follows:

(1) Standard apricot, plum and grape basket, approximately eight inches square on top, six and one-half

inches on bottom and four inches deep, inside measurements.

(2) Standard berry baskets, dry pint containing an interior capacity of approximately thirty-three and six-tenths cubic inches and dry one-half pint containing interior capacity of approximately sixteen and eight-tenths cubic inches.

(3)

	Depth inside	Width inside	Length outside
Standard pear box.....	8½"	11½"	19¾"
Half pear box.....	4½"	11½"	19¾"
Standard peach box.....	4¼"	11½"	19¾"
Standard peach box.....	4½"	11½"	19¾"
Standard peach box.....	4¾"	11½"	19¾"
Standard crates .....	4¼"	16 "	17½"
Standard crates .....	4½"	16 "	17½"
Standard crates .....	4¾"	16 "	17½"
(4) Standard grape crates.....	4¼"	16 "	17½"
with heavy cleat 11/16"			
by 11/16"			
(5) Standard grape drum.....	14 "	15½"	.....
containing 2923 cu. in.			
(6) Standard grape keg.....	.....	.....	.....
containing 2923 cu. in.			
(7) Standard lug box.....	5¾"	14 "	17½"
(8) Standard cherry lug.....	4½"	11½"	19¾"
(8½) Standard cherry lug.....	4½"	9 "	19¾"
(9) Standard cherry box.....	2¼"	9 "	19¾"

(10) Standard cantaloupe crates, twelve inches by twelve inches by twenty-two and one-half inches, to be packed with thirty-six or forty-five cantaloupes; four inches by twelve inches by twenty-two and one-half inches, to be packed with twelve or fifteen cantaloupes; eleven inches by eleven inches by twenty-two and one-half inches, to be packed with forty-five or fifty-four cantaloupes; thirteen inches by thirteen inches by twenty-two and one-half inches, to be packed with thirty-six or



forty-five cantaloupes; four and one-half by thirteen and one-half by twenty-two and one-half inches, containing twelve or fifteen cantaloupes.

(e) *Labels for Fruit Containers.*—Sec. 7. All containers of fruit of a kind specified in this act, except subcontainers, when packed and offered for sale, shall bear upon them in plain sight and in plain letters on the outside thereof the following: Name of the orchard where the same was produced, with the post-office address thereof, or the name and post-office address of the person, firm, company or corporation, or organization who shall have first packed or authorized the packing of the same, or the name under which such packer shall be engaged in business, together with the post-office address of such packer; name of variety if known, and when not known the words “unknown variety;” minimum net weight or approximate number of fruits in the container or subcontainer, which number shall be within four of the true count, and no container or subcontainer shall have less than the minimum stamped thereon. When two or more varieties are packed or placed in a container, they shall be labeled “mixed varieties;” *provided*, that pears and peaches, when packed, shall have the correct number within four placed on the container.

Standard or other containers when used as subcontainers are exempt from the provisions regarding marking, when the container in which they are placed is marked in compliance with the terms of this section. No containers or subcontainers of fresh fruits or vegetables shall bear grade or other designations that are in any way false or misleading.

(f) *Standard Containers.*—Sec. 8. After January 1, 1920, all fresh fruits of the kinds specified in this act, except such as shall be used in the manufacture of by-products, when prepared or offered for sale or sold, shall be packed or placed in standard containers, which are hereby established, and shall conform to all provisions of this act; *provided*, that other sized containers may be

used if conspicuously marked in letters not less than one-quarter inch high, "irregular container."

(g) *Standard for Grapes and Oranges.*—Sec. 9. In addition to the standards prescribed in section two of this act, table grapes shall show a sugar content of not less than seventeen per cent Balling scale, except Emperor, Gros Coleman and Cornichon, which shall show not less than sixteen per cent Balling scale. Oranges shall be deemed properly matured for shipment or sale under the provisions of this act when the juice contains soluble solids equal to or in excess of eight parts to every part of acid contained in the juice, the acidity of the juice to be calculated as citric acid without water of crystallization; *provided*, that the oranges have attained at least twenty-five per cent yellow or orange color before picking, and oranges which are substantially or at least seventy per cent colored at the time of picking shall be deemed properly matured for shipment or sale, irrespective of analysis of the juice. When packed, shipped, delivered for shipment, offered for sale or sold, oranges shall be virtually free from insect and fungous diseases and other serious defects. Oranges shall be considered unfit for shipment when frosted to the extent of endangering the reputation of the citrus industry, if shipped. The foregoing provisions shall not apply to shipments of oranges to foreign countries other than the dominion of Canada, during any season, provided such shipments are made after the first day of November.

(h) *Inspectors of Fresh Fruit and Vegetables.*—Sec. 10. The office of "inspector of fresh fruit and vegetables" is hereby created for each and every county in the state. The horticultural commissioner of each county, and all deputy horticultural commissioners shall be ex officio inspectors of fresh fruits and vegetables thereof, and the inspectors under each county horticultural commissioner are ex officio "deputy inspectors of fresh fruits and vegetables" in their respective counties. The county horticultural commissioner shall appoint as many deputy "inspectors of fresh fruits" as are necessary to carry

out the provisions of this act. Their term of office shall be for such time as is deemed necessary by said board of supervisors. The offices of "inspectors in chief of fresh fruits and vegetables" are hereby created, and the state commissioner of horticulture and his chief deputy, for the purposes of this act, are hereby made *ex officio* such inspectors in chief. It shall be the duty of the "ex officio inspectors in chief of fresh fruits and vegetables" to secure strict and uniform enforcement of the provisions of this act throughout the state, and for that purpose, immediately after this act becomes a law, the state commissioner of horticulture shall appoint two state inspectors of fresh fruits and vegetables, each of whom shall receive a salary of two thousand four hundred dollars per annum and necessary traveling expenses when engaged in the duties of enforcing this act.

(i) *Appointment and Compensation.*—Sec. 11. If in any county, or city and county, of this state there is no commissioner of horticulture, it shall be the duty of the board of supervisors thereof to appoint an inspector of fresh fruits and vegetables and such deputy inspectors of fresh fruits and vegetables as shall be deemed necessary. Such inspectors and deputy inspectors of fresh fruits and vegetables shall be appointed to serve for such time during each year as fresh fruits and vegetables are being packed or shipped in said county, or city and county. Inspectors of fresh fruits and vegetables thus appointed shall receive six dollars per day and necessary traveling expenses. The salary of a deputy inspector of fresh fruits and vegetables shall be five dollars per day and necessary traveling expenses. In case the board of supervisors of any county, or city and county, shall fail or neglect, for thirty days after receipt of a written request from the state commissioner of horticulture, to appoint an inspector of fresh fruits and vegetables, or necessary deputy inspectors of fresh fruits and vegetables for such county, or city and county, then the said state commissioner of horticulture shall forthwith assign

to said county, or city and county, one or more deputy state commissioners of horticulture, as he shall deem necessary, and such deputy or deputies shall perform all of the duties within the said county, or city and county, to which assigned, as are provided in this act to be performed by an inspector of fresh fruits and vegetables. The actual cost of services rendered by an inspector or deputy inspector, as the case may be, of fresh fruits and vegetables, assigned to any county in pursuance hereof, together with his necessary traveling expenses, shall be a county charge and shall be paid in the same manner in which other claims against the county are paid.

(j) *Powers and Duties of Inspector.*—Sec. 12. Every inspector of fresh fruits and vegetables and every deputy inspector of fresh fruits and vegetables shall have power to enter and to inspect every place within the county for which he has been appointed where any fruit or vegetables mentioned in this act are produced, stored, packed, shipped, delivered for shipment, offered for sale or sold, and to inspect such places and all such fruits and vegetables and the containers thereof and the equipment found in any such places. It shall be the duty of the inspectors or deputy inspectors of fresh fruit or vegetables in their respective districts to enforce the provisions of this act and to cause the prosecution of any person, firm, corporation or organization, whom they know or have reason to believe to be guilty of the violation of any of its provisions. Any inspector or deputy inspector of fresh fruits and vegetables in the performance of his duties shall have the same powers possessed by peace officers of the city, county, or state, and shall have the right while exercising such police powers to seize and hold as evidence part or all of any pack, load, consignment or shipment of fresh fruits or vegetables packed in violation of this act, as may in his judgment be necessary to secure the conviction of the party he knows or believes has violated or is violating any of the provisions of this act. He may start proceedings in



any court of the county, or city and county, within his jurisdiction to secure the conviction of the party or parties who have violated any of the provisions of the act. It shall be the duty of the district attorney of said county, or city and county, in which any violation of this act may occur, to prosecute the person, firm, company, organization or corporation accused of such violation and also, at the request of the state commissioner of horticulture, or any one of his deputies, to institute and prosecute such action for condemnation as may be authorized under the provisions of this act.

(k) *Refusal to Ship*.—Sec. 13. It shall be lawful for any fresh fruit or vegetables forwarding person, firm, corporation or organization and for any common carrier to decline to ship or transport any fresh fruits or vegetables, which upon inspection are found to be packed in violation of the provisions of this act, and any such fruit or vegetables forwarder or common carrier may reserve the right in any receipt, bill of lading or other writing given to the consignor thereof, to reject for shipment and to return to such consignor or hold at the expense and risk of the latter all fresh fruits or vegetables which upon inspection are found to be packed in violation of the provisions of this act.

(l) *Penalty for Violation*.—Sec. 14. It shall be unlawful for any person, firm, company, organization or corporation, to pack or cause to be packed for sale or shipment, import, sell, offer for sale, or deliver for shipment any of the fresh fruits or vegetables specified in this act that do not conform to the standards herein provided. It shall also be unlawful to prepare, sell or offer for sale, a deceptive pack of fresh fruits, fresh vegetables or dried fruits or dried vegetables or to mislabel any package of any such fruits or vegetables. Any person, firm, corporation, company or organization who shall violate any of the provisions of this act shall be deemed to be guilty of a misdemeanor.



Sec. 15. All laws in conflict with this act are hereby repealed.

(m) *Constitutionality*.—Sec. 16. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Act of the Legislature, approved May 27, 1919;  
in effect July 27, 1919, January 1, 1920.

Section 63.—APPLES—STANDARD GRADES AND BOXES.—The following standard grades and standard box are hereby established for apples, packed, shipped, delivered for shipment, offered for sale or sold, in the State of California:

(a) "*California Fancy*."—The "California fancy" grade shall consist of apples of well-grown, properly matured specimens of one variety, hand picked, with stems retained therein, either in whole or in part, well colored and normally shaped for the variety and locality where produced, uniform in size, well packed, and shall be free from insect pests, diseases, visible rot, visible dry rot, visible Baldwin spot, insect bites, bruises and other defects, except such bruises and defects as are necessarily caused in the operation of packing, and virtually free from dirt; *provided, however*, that a variation from the said standard, as to insect pests, diseases, dry rot, Baldwin spot, insect bites, bruises and other defects, shall be allowed, not to exceed ten per cent total of such defects in any one package, nor to exceed three per cent of any one such defect; *and provided, further*, that a variation in size of the apples shall be allowed, not to exceed three-eighths of one inch, when measured through widest portion of cross section thereof, and that no apples less

Section 63, page 122—APPLES, STANDARD GRADES AND BOXES.

(a) Among defects which the "California Fancy" grades must be free from is added "skin broken at stem," and the total variation in any one package shall not exceed 5% of any one defect.

(b) In the "B Grade" scab spots on any one apple not larger than one-fourth inch in diameter in the aggregate are now permitted; and a variation from the standard is permitted of five per cent in any one defect.

(c) In the "C Grade" scab spots on any one apple not larger than one-fourth inch in diameter in the aggregate are now permitted; and a variation of not to exceed five per cent of any one defect.

(d) On each container of apples which has been held in cold storage for more than fifteen days after being packed, there must be a statement showing the fact that the contents have been held in cold storage.

(e) The term "five tiers" shall mean an apple not smaller in size than one and seven-eighths inches nor larger than two and one-fourth inches.

(f) The Director of Agriculture of California is charged with the enforcement of the law with reference to apples.

(g) Infected apples. No person, firm, company, organization or corporation shall import into this state or sell, barter, offer for sale, or have in his possession for sale any apples infected with any insect pest or the pupae or larvae thereof or any disease; **provided, however,** that this section shall not be construed to prevent a grower of fruits so infected in the State of California from selling the same as a part of his crop in bulk, to a packer, or to prevent a grower or packer from manufacturing the same into an apple by-product or from selling the same to any person for the express and sole purpose of such manufacture.

(h) Penalty. Any person, firm, company, organization or corporation, who shall violate any of the provisions of this act shall be punishable by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for a period of not more than six months, or by both such fine and imprisonment.

(i) Guaranty. No conviction of a violation of the law can be had if a written guaranty is shown, signed by the original packer or re-packer. The guaranty must be in the following form: "The undersigned guarantees that (this box or other package of apples or the boxes or other packages of apples mentioned in this or the attached invoice, or all boxes or other packages of apples packed or repacked by the undersigned), comply in all respects with the California standard apple act. (Signature of the packer, with statement as to whether packer is firm, company, organization or corporation and business address.)"

Where the guaranty is used on each separate box, it may consist of the legend, "guaranteed by the packer, under the California standard apple act," printed, stamped or written on the labeled or branded end of the package. Act of the Legislature of California, approved June 3, 1921; in effect August 3, 1921.



than two and one-fourth inches when measured in like manner, shall be placed in "California fancy" grade except Lady and Winesap apples, when the smallest size shall be not less than two inches when measured in like manner.

(b) "*B Grade.*"—The "B grade" shall consist of apples of well-grown, properly matured specimens of one variety, hand picked, uniform in size, well packed, free from insect pests, diseases, visible rot, visible dry rot, visible Baldwin spot, insect bites, sun scald and frost bite more than skin deep, and bruises resulting in the breaking of the skin, and virtually free from dirt; *provided, however*, that insect bites which have healed in the process of maturity of the apple, and which do not cause serious deformity, and slightly misshapen apples, shall be permitted in this grade, that a variation in size of the apples shall be allowed, not to exceed three-eighths of one inch when measured through widest portion of cross section thereof, and that a variation from the said standard, as to insect pests, diseases, dry rot, Baldwin spots, bruises and other defects, shall be allowed, not to exceed ten per cent total of such defects in any one package, nor to exceed three per cent of any one such defect.

(c) "*C Grade.*"—The "C grade" shall consist of apples of properly matured specimens of one variety, free from insect pests, visible rot, visible dry rot, visible Baldwin spots and diseases; *provided, however*, that a variation from said standard as to insect pests, dry rot, Baldwin spots and diseases, shall be allowed, not to exceed ten per cent total of such defects in any one package, nor to exceed three per cent of any one such defect.

(d) *Standard Container.*—The standard container shall be a box of the following dimensions, inside measurements, when measured without distention of parts: Depth of end, ten and one-half inches; width of end, eleven and one-half inches; length of box, eighteen inches, and having a cubical content of as nearly as possible two thousand one hundred seventy-three and one-half cubic

inches.

(e) *Use After July 1, 1920.*—On and after July 1, 1920, all packed apples, when shipped, offered for sale or sold, shall be placed in the standard box herein described; provided, however, that other size containers may be used if conspicuously marked in letters not less than one-half inch high “irregular container.”

(f) *Labelling of Container.*—Every packed container of apples shipped, delivered for shipment, offered for sale or sold, in the State of California, shall bear upon the outside thereof, and on the end, in plain words or figures and in the English language, the following: The grade of the apples therein contained, as herein defined, the designation of grade, when the stamps hereinafter provided for are not used, being stated in letters not smaller than thirty-six point type, that is, not less than one-half inch in height; the number of apples contained in the package, or the minimum weight of the apples contained therein; the variety of the apples contained in the package, unless the variety be unknown to the packer, in which case the variety shall be stated as unknown; the name and business address of the person, firm, company, organization or corporation who first packed or caused the same to be packed, and, if repacked, the name and business address of the person, firm, company, organization or corporation who repacked the same or caused same to be repacked; the date when such apples were first packed, or if repacked, the date of repacking; *provided, however*, that a variation of five apples, more or less than the number stated, shall be allowed.

(g) *Definitions.*—The term “packed,” whenever used in this act, shall mean the regular, compact arrangement of all or a part of the fruit in any container.

The terms “three and one-half tier,” “four tier,” and “four and one-half tier,” whenever used as the designation of the size of apples sold or offered for sale, shall have the following meanings, respectively, to-wit: The term “three and one-half tier” shall mean an apple



larger in size than three and one-eighth inches, when measured through the widest cross section thereof; the term "four tier" shall mean an apple larger in size than two and five-eighth inches but not larger than three and one-eighth inches, when so measured; and the term "four and one-half tier" shall mean an apple not smaller in size than two and one-fourth inches nor larger than two and five-eighth inches, when so measured.

The term "cross-section," whenever used in this act, shall mean the section of an apple taken at a right angle to a straight line drawn from the stem end to the blossom end thereof.

(h) *Powers and Duties of Inspectors.*—Every inspector shall have power to enter and to inspect any place within this state where any apples are produced, packed, shipped, delivered for shipment, offered for sale or sold, and to inspect such places and all such apples and the containers thereof and the equipment found in any such place. It shall be the duty of the inspectors to enforce the provisions of this act and to cause the prosecution of any person, company, firm, corporation or organization, whom he knows or has reason to believe to be guilty of the violation of any of its provisions. Every inspector, in the performance of his duties, shall have the same powers possessed by peace officers under the laws of the State of California.

(i) *Refusal to Receive or Ship.*—It shall be lawful for any person, firm, corporation or organization and for any common carrier to refuse to accept for shipment or transportation and to refuse to ship or transport any apples which upon inspection are found to be or to be packed in violation of any of the provisions of this act, and any such person, firm, corporation, organization or common carrier may reserve the right in any receipt, bill of lading or other writing given to the consignor thereof, to reject for shipment and to return to such consignor or to hold at the expense and risk of the latter all apples which upon inspection are found to be or to be packed

in violation of any of the provisions of this act.

(j) *Constitutionality*.—If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

Act of the Legislature, approved April 30, 1919;  
in effect July 22, 1919, July 1, 1920.

## INSTALLMENT SALES OF PERSONAL PROPERTY

Section 64.—CONDITIONAL SALES OF PERSONAL PROPERTY.—Where personal property is delivered, under a contract for payments on installments, title to remain in the vendor until final payment, it is a conditional sale. The title to the property does not pass from the vendor, nor vest in the vendee, until the contract is completed upon the payment of the last installment.

Section 65.—LANGUAGE OF THE CONTRACT.—It makes no difference what language is used in the contract, if the intention of the parties is to be seen, that the vendor retains the title until the money is paid. The paper may be called a “deed,” or “agreement,” or “lease,” and the designation will not affect the real meaning of the contract. It is only a conditional sale, no more, no less, whatever the language used in the contract may be. In the case of Lundy Furniture Company vs. White, our Supreme Court said, “Where goods were delivered under a contract, designated as a lease, providing for a monthly rental, and that the consent of the seller should be necessary for the removal of the goods from the purchaser’s residence, and reserving title in the seller until full pay-

ment, after which a bill of sale was to be given, the transaction was a conditional sale, and the title remained in the seller. The name by which the parties designate their contract is not determinative of its nature. The calling of this agreement a 'lease' did not make it such. The payments, to be made monthly in installments, designated 'rent,' were in fact nothing but partial payments.'" (Decided by the Supreme Court of California, in the case of Lundy Furniture Company vs. White, which decision is printed in Volume 126 of the California Reports, page 170.)

Section 66.—DEFAULT IN PAYMENTS.—It is the duty of the vendee to make payments of the installments when due. He has no right, after he has received the property, to change or alter in any way the terms of payments. If he does not pay when due, this will amount to a default on his part, and a breach of the contract, for which the vendor may take immediate action.

Section 67.—SALE BY VENDEE TO ANOTHER PERSON.—The party receiving the property has no right to sell it until the purchase price is paid. If the vendee sells the property, the purchaser from him obtains no title, and the original vendor may recover the property. The second vendee is not entitled to stand in any better situation than his vendor in regard to the title of the property. And where the owner of a piano sold it on the installment plan, with the condition that the title should remain in the seller until final payment, and the vendee sold the piano before payment of the final installment, the Supreme Court held that the purchaser from him got no title, and the true owner was entitled to recover his property. (Decided by the Supreme Court of California in the case of Kohler vs. Hayes, which decision is printed in Volume 41 of the California Reports, page 445.)

Section 68.—REMEDY OF SELLER IN CASE OF PURCHASER'S DEFAULT.—If the purchaser fails to make pay-

ments as they accrue, and lets the installments or any of them go by default, the seller has either one of two remedies: (1) He may, upon the default of the purchaser in meeting the stipulated payments, or any of them, treat the contract as no sale, and take the property into his own possession again. If he is prevented by the purchaser from retaking the property, he may go into court and recover it in a suit on claim and delivery. (2) Or, the seller may treat the sale as an absolute one, and bring a suit to recover each installment as default is made in payment; in which case, other property of the buyer (not exempt from execution) may be attached and levied upon to pay the judgment obtained against him. (Decided by the Supreme Court, in the case of Holt Manufacturing Company vs. Ewing, which decision is printed in Volume 109 of the California Reports, page 353.)

Section 69.—**MONEY ALREADY PAID.**—It is lawful for the contract to provide that all installments paid before default shall be forfeited as damages for the use of the property, or as rent, and such conditions, if fairly entered into, will be enforced by the law of California. The parties to a conditional installment sale have the right to agree upon a certain sum as damages, which is called "liquidated damages," to belong to the seller in case of default on the part of the purchaser.

Civil Code, Section 1671.

Section 70.—**ABSOLUTE SALE ON INSTALLMENTS.**—A sale of personal property, the purchase price to be paid in installments, may be made without any other conditions. In this case, the sale is absolute, and passes the title to the purchaser; and if default is made, the seller has no right to retake the property; but he may sue and put an attachment on the property for the purchase price.

Section 71.—**FORM OF CONDITIONAL AGREEMENT.**—The following is a good form of agreement for conditional sale of personal property:



San Francisco, California, \_\_\_\_\_, 19\_\_\_\_  
 I promise to pay to \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_ Dollars, at \_\_\_\_\_  
 \_\_\_\_\_, Cal., as rent for \_\_\_\_\_

(Here describe property.)

as follows: \_\_\_\_\_ Dollars before delivery  
 of said property to me, and \_\_\_\_\_ Dollars  
 per month on the \_\_\_\_\_ day of each and every  
 \_\_\_\_\_ month thereafter, commencing on the  
 \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, with interest on  
 the amount unpaid at the rate of \_\_\_\_\_ per cent per  
 annum, payable monthly.

I acknowledge the receipt of said property, and agree  
 that I will keep the same in good order, and that it shall  
 not be removed from No. \_\_\_\_\_ Street,  
 in the City of \_\_\_\_\_, without the  
 written consent of said \_\_\_\_\_

\_\_\_\_\_, and do also agree that until the sum of  
 \_\_\_\_\_ Dollars with interest, as aforesaid,  
 is fully paid, said property is the property of said \_\_\_\_\_  
 \_\_\_\_\_, and that I have no  
 right to dispose thereof; but when the total sum of \_\_\_\_\_  
 \_\_\_\_\_ Dollars and interest has been paid, and  
 not until then, I shall receive a bill of sale and the title to  
 said property shall vest in me.

I also agree that if I fail to pay any of said install-  
 ments when due, or perform any of the aforesaid con-  
 ditions, or said property be attached or levied upon, all  
 of said sum of \_\_\_\_\_ Dollars shall in any of said  
 cases immediately become due and payable, and \_\_\_\_\_

\_\_\_\_\_ may enforce pay-  
 ment of the entire sum then unpaid and interest thereon;  
 or may, if he so elect, rescind this executory contract and  
 take possession, without legal process, of said property,  
 and for that purpose may enter any premises where the  
 same may be (all damages for said entry being hereby  
 expressly waived); and thereupon, if said \_\_\_\_\_  
 \_\_\_\_\_ shall elect to rescind, and shall retake said  
 property, he shall refund the money paid by me, if any



remains, after deducting a rental for use of said property of \_\_\_\_\_ Dollars per month, expenses of taking possession and removal, and twenty per cent of total sum to be paid for liquidated and assessed damages, which rental, expenses, and damages I promise and agree to pay said \_\_\_\_\_. Said rental dating from delivery of said property to me.

In all matters herein mentioned, time is declared to be the essence of this contract.

\_\_\_\_\_, Vendee.  
I agree to the terms of the foregoing contract.

\_\_\_\_\_, Vendor.

(a) *Form of Installment Agreement Where Personal Property Is Attached or to Be Attached to a Building.*—Another form may be used, if it is for the conditional sale of property attached or to be attached to a building, as follows:

Los Angeles, Cal., \_\_\_\_\_, 19\_\_\_\_\_  
I promise to pay to \_\_\_\_\_ the sum of \_\_\_\_\_ Dollars, at \_\_\_\_\_ as rent for \_\_\_\_\_  
(Here describe property.)

as follows: \_\_\_\_\_ Dollars before delivery of said property to me, and \_\_\_\_\_ Dollars per month on the \_\_\_\_\_ day of each and every \_\_\_\_\_ month thereafter, commencing on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, with interest on the amount unpaid at the rate of \_\_\_\_\_ per cent per annum, payable monthly.

I acknowledge the receipt of said property, and agree that I will keep the same in good order, and that it shall not be removed from No. \_\_\_\_\_ Street, in the City of \_\_\_\_\_, without the written consent of said \_\_\_\_\_.

The said property is to be attached to that certain building occupying or standing on the following described premises, to-wit:

\_\_\_\_\_  
\_\_\_\_\_

(Here describe the lot or tract of land; if in a city or village, describe its location by street number, if known; if in a city or county where the block system of recording and indexing conveyances is in use, the section and block within which it is located must be given.)

And I do also agree that until the sum of ..... Dollars with interest, as aforesaid, is fully paid, said property is the property of said ..... and that I have no right to dispose thereof; but when the total sum of ..... Dollars and interest has been paid, and not until then, I shall receive a bill of sale and the title to said property shall vest in me.

I also agree that if I fail to pay any of said installments when due, or perform any of the aforesaid conditions, or said property be attached or levied upon, all of said sum of ..... Dollars shall in any of said cases immediately become due and payable and ..... may enforce payment of the entire sum then unpaid and interest thereon; or may, if he so elect, rescind this executory contract and take possession, without legal process, of said property, and for that purpose may enter any premises where the same may be (all damages for said entry being hereby expressly waived); and thereupon, if said ..... shall elect to rescind, and shall retake said property, he shall refund the money paid by me, if any remains after deducting a rental for use of said property of ..... Dollars per month, expenses of taking possession and removal, which rental and expenses I promise and agree to pay said ..... said rental dating from delivery of said property to me.

In all matters herein mentioned, time is declared to be of the essence of this contract.

....., Vendee

I hereby accept the above contract and agree to its terms.

....., Vendor.

(b) *Form of Installment Agreement for Sale of Machinery.*—The following is a form of conditional agreement for the sale of machinery:

Agreement made the.....day of....., 19....., between ....., of ....., party of the first part, and ....., of ....., party of the second part. The said parties mutually agree as follows:

1. In consideration of payments hereby reserved, and of the performance of the conditions and stipulations hereinafter contained, and on the part of the said party of the second part to be performed, the said party of the first part will, on or before the .....day of..... next, erect and place in the mill of the said party of the second part situated at....., in the County of ....., State of..... the machinery particularly described in the schedule hereto annexed, and hereafter called the said machinery.

2. The said party of the second part shall hold and be at liberty to use the said machinery for the term of .....years from the said.....day of..... next, at the rent of.....dollars per annum, payable half-yearly on the.....day of....., and the .....day of....., in each year during the continuance of the said term, such payments making in the aggregate the sum of.....dollars (price of the machinery), the first of such payments to be made in advance on the said.....day of.....next.

3. The said party of the second part shall, at his own expense, from time to time, replace and repair all such parts of the said machinery as may be broken, worn out or damaged, and keep the same in every respect in good working order; and he will not, during the said term, remove any part of the said machinery from the building where the same may be erected without the consent in writing of the said party of the first part, and will not assign, transfer, underlet, or part with the possession of the same, either directly or indirectly.

4. The said party of the second part will punctually pay the rents hereby reserved, and perform all the conditions and stipulations herein contained, and on his part to be performed; and will not do or suffer anything whereby the said machinery or any part thereof shall or may be

seized, taken in execution, attached, removed, destroyed, or injured.

5. The said party of the second part shall keep said machinery insured against damage or loss by fire in some office to be approved by the said party of the first part for at least the sum of .....dollars, and will pay the premiums for such insurance, and will forthwith deliver to the said party of the first part the policies of such insurance, and the receipts for the premiums which shall become payable therefor.

6. It is hereby expressly declared that the property in said machinery shall remain in the said party of the first party to all intents and purposes; provided, that the said machinery shall become the absolute property of the said party of the second part on the expiration of the said term, and payment of all the rent hereby covenanted to be paid, and all costs, charges, and expenses provided for under this agreement.

7. In case of the bankruptcy of the said party of the second part, or in case he shall assign, transfer, or mortgage the said machinery, or any part thereof, or in case he shall make default in performing and observing any of the covenants, conditions, or agreements herein contained, the said aggregate sum of .....dollars shall become immediately payable to the said party of the first part, and he may at his option enter said premises, and every building in which any part of the said machinery may be, and take possession of and remove the said machinery.

8. The said machinery is to be attached to that certain building occupying or standing on the following described premises, to-wit:

.....  
.....  
.....  
(Here describe the lot or tract of land on which the mill or building is situated; if in a city or village, describe its location by street number, if known; if in a city or county where the block system of recording and index-



ing conveyances is in use, the section and block within which it is located must be given.)

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

.....(Seal.)

.....(Seal.)

(c) *Assignment of Contract.*—The contract may be assigned, if there is nothing in its terms prohibiting such assignment. Under the contract the vendee is entitled to the possession of the property, and to become the absolute owner thereof, upon complying with the terms of the contract. These are rights of which he cannot be divested by any act of the vendor, and which he can transfer to another in the absence of a stipulation in the contract to the contrary. The title to the property vests in the vendee upon the performance of the conditions of the sale, or in his assignee in the event that he has transferred his interest therein. He cannot sell the property itself, for he does not own it until final payment. But he can assign and transfer to another his interest in the contract, unless the contract itself prohibits such transfer.

(d) *Form of Assignment of Installment Contract.*—The following is a form of assignment of an installment contract. This form is to be indorsed on the contract, or written on a separate paper and affixed to the contract:

Los Angeles, Cal., ....., 19.....

For value received, I do hereby transfer, assign and convey to....., his heirs and assigns forever, all my right, title, and interest in, to, and under the within instrument.

## STOPPAGE IN TRANSIT

Section 72.—WHEN SELLER OR CONSIGNOR MAY STOP GOODS IN TRANSIT.—A seller or consignor of goods, whose claim for its price has not been paid, may stop the goods



while on their way to the buyer or consignee, and may take possession of the goods. He may do this whenever it becomes known to him, after parting with the property, that the buyer or consignee is insolvent. A person is insolvent, in the meaning of the law, when he ceases to pay his debts in the manner usual with persons of his business, or when he declares his inability or unwillingness to pay his debts. The property can be stopped only by notice to the carrier or holder of the goods, or by taking actual possession of the goods. As the taking of actual possession will be ordinarily impossible, where the goods are on the way to the buyer or consignee on board cars or vessels, a notice to the carrier not to deliver the goods will be sufficient to stop them; and if the carrier, notwithstanding such notice, delivers the goods to the buyer or consignee, the carrier will be liable to the seller or consignor in damages. The property can only be stopped while in transit. The transit of property is at an end when it comes into the possession of the consignee, or into the possession of his agent to receive it. Therefore, if the seller, after shipping the goods, discovers that the consignee is insolvent (that he has ceased to pay his debts in the usual manner, or has declared his inability or unwillingness to pay his debts), he must act promptly in order to stop the goods, and must give notice to the carrier not to make delivery. The sale of the goods is not rescinded by stopping them in transit. The seller simply resumes his vendor's lien for the price of the goods, and, if the consignee comes forward and pays the sum due on the purchase price, the goods must be released and allowed to proceed on their way. The seller, by stopping the goods in transit, does not become again the owner. He has parted with the title, but he again comes into possession, and holds the goods for the unpaid price. The carrier, after notice to stop, must deliver the goods to the vendor, and the vendor will then hold the property until the expiration of the credit given, and may then proceed to give notice and sell them again.

(a) *What Will Defeat Vendor's Right to Stop Goods.* The right of stoppage in transit belongs only to one occupying in some way the relation of vendor toward the consignee of the goods. And where the goods are transferred by the vendee to a bona fide purchaser for value, this will defeat the vendor's right to stop the goods. Where the buyer has possession of the bill of lading, with the consent of the seller, and indorses it to a bona fide purchaser of the goods,—to one who has no notice of the seller's claim or the buyer's insolvency, and who pays value for the goods,—this will defeat the right to stop the goods. The consignee may intercept the goods on the way, and take possession of them, at a different station or place from that of their destination, and the consignor's right of stoppage will be lost.

## WARRANTY OF PERSONAL PROPERTY

Section 73.—WARRANTY OF TITLE.—A warranty is an engagement by which a seller assures to a buyer the existence of some fact affecting the transaction, whether past, present, or future. A warranty of the character, condition, or quality of personal property arises from contract, either express or implied. The parties may expressly state the warranty they agree upon, or a warranty may arise by reason of some obligation which the law imposes upon the parties or the circumstances. One who sells personal property as his own thereby warrants that he has a good and unencumbered title to the property. The law implies this warranty from the fact of sale.

Civil Code, Section 1765.

Section 74.—WARRANTY ON SALE BY SAMPLE.—One who sells or agrees to sell goods by sample thereby warrants the quality of the bulk to be equal to that of the sample. Where goods are sold by sample, and the articles are inferior to the sample shown, the purchaser is not bound

to accept the goods, for that would be to force upon him goods of a different quality from that which he bargained for. In a sale by sample the law implies a warranty that the bulk of the property sold is equal to the sample exhibited. This warranty constitutes a condition of the contract of sale, and in such case the delivery of the goods to the carrier for transportation to the buyer does not have the effect of passing title to the buyer. In order that the delivery of the goods to the carrier shall operate to pass the title to the consignee, it is essential that the goods so delivered shall conform in quantity and quality with the order given for them. If, therefore, the vendor sends more or less than the quantity ordered, or of a different quality, the title will not pass unless the purchaser accepts them. (Decided by the Supreme Court of California in the case of Gardiner vs. McDonogh, which decision is printed in Volume 28, California Decisions, page 776.)

Civil Code, Section 1766.

Section 75.—WARRANTY ON AGREEMENT TO SELL MERCHANDISE NOT IN EXISTENCE.—A person may agree to sell merchandise not then in existence, but he thereby warrants that it shall be sound and merchantable at the place of production contemplated by the parties; and the seller also warrants that such merchandise, when delivered, shall be as nearly sound and merchantable at the place of delivery as can be secured by reasonable care.

Civil Code, Section 1768.

Section 76.—MANUFACTURER'S WARRANTY AGAINST DEFECTS.—One who sells or agrees to sell an article of his own manufacture thereby warrants it to be free from any latent defect, not disclosed to the buyer, arising from the process of manufacture; and also that neither he nor his agent in such manufacture has knowingly used improper materials therein; and one who manufactures an article, under an order for a particular purpose, warrants by

the sale that it is reasonably fit for that purpose; so, if it turns out either that the article manufactured is defective, which defect was not apparent or disclosed to the buyer, or that the article is not reasonably fit for the purpose for which it was ordered, the buyer has the right to rescind the sale, by returning or offering to return the article to the manufacturer.

Civil Code, Sections 1769, 1770.

Section 77.—WARRANTY OF SOUNDNESS.—One who sells or agrees to sell merchandise not open to the examination of the buyer thereby warrants that such merchandise is sound and merchantable.

Section 78.—WARRANTY BY TRADE-MARKS AND OTHER MARKS.—One who sells any article to which there is affixed a trade-mark thereby warrants it to be genuine and lawfully used. And one who sells any article with a statement or mark on it, or attached to it, expressing the quantity or quality of the article, or stating the place where it was manufactured, thereby warrants the truth of such representations.

Civil Code, Sections 1772, 1773.

(a) "*Trade-Mark*" Defined.—The phrase "trade-mark," as used in Section 40, includes every description of word, letter, device, emblem, stamp, imprint, brand, printed ticket, label, or wrapper, usually affixed by any mechanic, manufacturer, druggist, merchant, or tradesman, to denote any article to be goods imported, manufactured, produced, compounded, or sold by him; and also any name or names, marks or devices, branded, stamped, engraved, etched, blown, or otherwise attached or produced upon any cask, keg, bottle, vessel, siphon, can, case, or package, used by any mechanic, manufacturer, druggist, merchant, or tradesman, to hold, contain or enclose the goods so imported, manufactured, produced, compounded, or sold by him.

Political Code, Section 3196.

Section 78, page 139, Sub-Division (b), "Business Law for Business Men"  
—RECORDING TRADE-MARK—A trade-mark or name must be filed with the Secretary of State and also in the office of the County Clerk; and must be published weekly in a newspaper for three successive weeks. Act of the Legislature of California, approved May 26, 1921; in effect July 26, 1921.

Section 82, page 141—The act of 1911 concerning bottles, boxes, siphons and kegs is repealed. Act of the Legislature of California, approved May 26, 1921; in effect July 26, 1921.





(b) *Recording Trade-Marks*.—Any person may record any trade-mark or name by filing with the secretary of state his claim to the same, and a copy or description of such trade-mark or name, with his affidavit attached thereto, setting forth that he (or the firm or corporation of which he is a member) is the exclusive owner, or agent of the owner, of such trade-mark or name. The secretary of state must keep for public examination a record of all trade-marks or names filed in his office, with the date when filed and name of claimant.

Political Code, Sections 3197, 3198.

(c) *Assignment of Trade-Mark*.—Any person who has first adopted and used a trade-mark or name, whether within or beyond the limits of this state, is its original owner. Such ownership may be transferred and assigned in the same manner as personal property, by bill of sale.

Political Code, Section 3199.

(d) *Protection of Trade-Marks*.—The law will protect the owner of a trade-mark in his exclusive use of the same. The superior court will restrain, by injunction, any use of trade-marks, or names, which have been recorded with the secretary of state by the owner, where such trade-marks or names are used by any person not entitled thereto. The secretary of state must issue to the claimant, at the time the claim is filed, a certificate of filing under the great seal of the state, and must then collect from the claimant a fee of five dollars. The secretary of state must, however, refuse to file any trade-mark or name identical with, or so similar to any trade-mark or name already filed as to be calculated or liable to deceive.

Political Code, Section 3199; Act of the Legislature, approved March 6, 1909.

Any person who has first adopted and used a trade-mark or name, whether within or beyond the limits of

this state, is its original owner. Such ownership may be transferred in the same manner as personal property, and is entitled to the same protection by suits at law; and any court of competent jurisdiction may restrain, by injunction, any use of trade-marks or names in violation of this chapter.

Act of the Legislature, approved March 21, 1911.

Section 79.—WARRANTY OF PROVISIONS FOR DOMESTIC USE.—By a sale of provisions for domestic use, for immediate consumption, there is a warranty that the provisions are sound and wholesome.

Civil Code, Section 1775.

Section 80.—WARRANTY ON SALE OF GOOD WILL OF BUSINESS.—One who sells the good will of a business thereby warrants that he will not endeavor to draw off any of the customers.

Civil Code, Section 1776.

Section 81.—DAMAGES ALLOWED ON BREACH OF WARRANTY.—The general rule is, damages in case of a breach of warranty of quality, of personal property sold, are to be estimated with reference to values at the time and place of delivery. But where personal property is sold on a warranty, to be used at some place other than the place of sale and delivery, and it is known to the seller that the property is bought for use at another place, the damages for breach of the warranty may be estimated with reference to values at the place where the property is to be used. P. F. Dundon sold two boilers at San Francisco to be used in Siberia, and warranted that they would develop a certain horsepower. The boilers were constructed at San Francisco under a contract which required them to be delivered at the wharf in San Francisco, but it was understood by both parties that the boilers were to be sent to and used on the Amoor river in Siberia, 13,000 miles from San Francisco. When

they were set up and used in Siberia they were found to fall short of the warranty, and could not develop sufficient power for the purpose for which they were bought. The purchaser sued for damages, and the Superior Court of San Francisco gave him a judgment against Dundon for \$7,200, the price paid for the boilers, which would have been their value in Siberia if constructed so as to do the warranted work. The Court of Appeals affirmed the judgment.

(Decided by the California District Court of Appeals, in the case of Krasilnikoff vs. Dundon, which decision is printed in Appellate Decisions, Volume VII, page 7.)

Section 82.—BOTTLES, BOXES, SIPHONS AND KEGS.—Any and all persons engaged in manufacturing, bottling, or selling olives, olive oil, salad oil, soda waters, mineral or aerated waters, porter, ale, beer, cider, ginger ale, milk, cream, small beer, lager beer, weiss beer, white beer, or other beverages or Worcestershire or other sauce or sauces in bottles, siphons, or kegs, with his, her, its or their name or names, or other marks or devices, branded, stamped, engraved, etched, and blown, impressed, or otherwise produced upon such bottles, siphons, or kegs, or the boxes used by him, her, it or them, may file in the office of the clerk of the county in which his, her, its, or their principal place of business is situated, and also in the office of the secretary of state, a description of the name or names, marks, or devices, so used by him, her, it or them, respectively, and cause such description to be printed once in each week for three weeks successively, in a newspaper published in the county in which said notice may have been filed as aforesaid.

It is hereby declared to be unlawful for any person or persons, corporation or corporations, to fill with olive oil, salad oil, or any substitution for, or similar to olive oil, ripe or green olives, soda waters, mineral or aerated waters, port, ale, cider, ginger ale, milk, cream, beer,

small beer, lager beer, weiss beer, white beer, or other beverages, or Worcestershire or other sauce or sauces, or with medicine, compounds, or mixtures, any bottle, box, siphon or keg, so marked or distinguished as aforesaid, with or by any name, mark or device, of which a description shall have been filed and published, as provided in this act, or deface, erase, obliterate, cover up, or otherwise remove or conceal any such name, mark or device thereon, or to sell, buy, give, take or otherwise dispose of or traffic in the same, without the written consent of, or unless the same shall have been purchased from the person or persons, corporation or corporations, whose mark or device shall be or shall have been in or upon the bottle, box, siphon, or keg so filled, trafficked in, used, or handled as aforesaid. It is hereby declared to be unlawful for any person, firm, or corporation engaged in the manufacture, preparation or selling of drugs or food products to use bottles, in bottling or packing their products, that have been previously used for other purposes.

1. *Penalty.*—Any person or persons or corporation offending against the provisions of this section shall be deemed guilty of a misdemeanor, and shall be punished for the first offense by imprisonment of not less than ten days nor more than six months or by a fine of fifty cents for each and every such bottle, box, siphon or keg so filled, sold, used, disposed of, bought, or trafficked in, or by both such fine and imprisonment; and for each subsequent offense by imprisonment not less than twenty days, nor more than one year, or by a fine of not less than one dollar nor more than five dollars for each and every bottle, box, siphon, and keg so filled, sold, used, disposed of, bought or trafficked in, or by both such fine and imprisonment, in the discretion of the magistrate before whom the offense shall be tried.

2. *Search Warrants.*—Whenever any person, persons, or corporation, mentioned in section one of this act, or his, her, its or their agent, shall make oath before



any magistrate that he, she or it has reason to believe, and does believe, that any of his, her, or their bottles, boxes, siphons, or kegs, a description of the names, marks or devices, whereon has been so filed and published, as aforesaid, are being unlawfully used or filled, or had by any person or corporation manufacturing or selling olives, olive oil, salad oil, soda, mineral, or aerated waters, porter, ale, cider, ginger ale, milk, cream, small beer, lager beer, weiss beer, white beer, and other beverages, or Worcestershire or other sauce or sauces, or that any junk dealer, or dealer in second hand articles, vendor of bottles, or any other person or corporation, has any such bottles, boxes, siphons, or kegs, in his, her, or its possession, or secreted in any place, the said magistrate must thereupon issue a search warrant to discover and obtain the same, and may also cause to be brought before him the person in whose possession such bottles, boxes, siphons, or kegs may be found, and then inquire into the circumstances of such possession, and if said magistrate finds that such person has been guilty of a violation of this act, he must impose the punishment therein prescribed, and he shall also award possession of the property taken upon such search warrant to the owner thereof.

3. *Accepting Deposits.*—The requiring, taking, or accepting of any deposit for any purpose, upon any bottle, box, siphon, or keg, shall not be deemed or constitute a sale of such property, either optional or otherwise, in any proceeding under this act.

4. *Sale of Rights.*—Any person or persons, corporation or corporations that has or have heretofore filed a description of the name or names, marks, or devices, upon his, her, their or its property, and has caused the same to be published according to the laws existing at the time of such filing and publications, shall not be required to again file and publish such description to be entitled to the benefits of this act; and any person or persons, corporation or corporations, having complied

with the provisions of this act, may as a part of the sale, assignment or transfer of all his, her, their, or its said bottles, boxes, siphons, or kegs, used as aforesaid, with his, her, their or its name or names or other marks or devices, branded, stamped, engraved, etched, and blown, impressed or otherwise produced upon such bottles, boxes, siphons, and kegs, to any other person or persons, corporation or corporations, engaged in manufacturing, bottling or selling of olives, olive oil, salad oil, soda waters, mineral waters, porter, ale, beer, cider, ginger ale, milk, cream, small beer, lager beer, weiss beer, white beer, or other beverages, or Worcestershire or other sauce or sauces, sell, assign, and transfer the sole and exclusive right of using said name or names, mark or devices in said business. And in the event of such sale, transfer or assignment as aforesaid, or in the event of the transfer by operation of law or by sale under order of any court of the entire business of such person or persons, corporation or corporations, of the entire stock of bottles, boxes, siphons or kegs, belonging to them, him, her or it, to any person or persons, corporation or corporations, engaged in the manufacturing, bottling, or selling olives, olive oil, salad oil, soda waters, mineral or aerated waters, porter, ale, beer, cider, ginger ale, milk, cream, small beer, lager beer, weiss beer, white beer or other beverages, such person or persons, corporation or corporations, shall not be again required to file and publish a description of said name or names, marks, or devices, hereunder, but shall be entitled to all the benefits of this act immediately upon acquiring such bottles, boxes, siphons or kegs, or such business as aforesaid.

Act of the Legislature, approved March 21, 1911.

Section 83.—EXAMINATION OF PROPERTY BY PURCHASER. The law will not give redress to a purchaser who claims to have been deceived, if it appears that he had ample opportunity to examine the property, and that he had sufficient knowledge of the subject to know and under-

stand any defects which might have been apparent by such examination. But this position may be materially changed by representations which the seller himself makes about the property. Where the purchaser may know the truth by looking, or where the truth is shown him, he is not misled; but where he relies upon the statements of the seller, and has no knowledge that such statements are false, he can, when they are false, and when he himself has been reasonably prudent, recover damages. If no knowledge of their falseness is presented to him, the purchaser may rely implicitly upon the statements of the vendor, if such statements are not so openly false as to be apparent to an ordinarily prudent person.

## AUCTION SALES

Section 84.—AUTHORITY OF AUCTIONEER.—A sale by auction is a sale by public outcry to the highest bidder on the spot. Laws have been passed by the Legislature of California to regulate the authority of auctioneers, and the rights of bidders, and the manner of conducting auction sales. An auctioneer, by the law of California, without special authorization, has authority from the seller only to the extent that he may sell by public auction to the highest bidder; to sell for cash only, except such articles as are usually sold on credit at auction; to warrant the title of his principal to personal property sold by him, and the quality and quantity of the property; to prescribe reasonable rules and terms of sale; to deliver the things sold upon payment of the price; to collect the price; and to do whatever else is necessary, or proper and usual in the ordinary course of business, for effecting these purposes. An auctioneer will be deemed to have authority from a bidder at the auction, as well as from the seller, to bind both seller and bidder by a memorandum of the contract, whenever by law the sale must be evidenced by a memorandum in writing.

Civil Code, Sections 1792, 2362, 2363.

Section 85.—WHEN AUCTION SALE IS COMPLETE.—A sale by auction is not complete until the auctioneer publicly announces, by the fall of his hammer, or in some other customary manner, that the thing is sold.

Civil Code, Section 1793.

Section 86.—WITHDRAWAL OF BIDS.—Until the public announcement necessary to complete the sale is made by the auctioneer, any bidder may withdraw his bid. The only thing necessary to do in withdrawing a bid is to notify the auctioneer that the bid is withdrawn, before the final announcement of the sale.

Civil Code, Section 1794.

Section 87.—AUCTION SALE UNDER WRITTEN CONDITIONS.—Whenever an auction sale is made under written or printed conditions, the auctioneer must follow such conditions, and has no power to change them by any oral declaration, except that he may modify a condition intended for his own benefit.

Civil Code, Section 1795.

Section 88.—AUCTION SALE WITHOUT RESERVE.—Public policy requires that auction sales shall be conducted with the highest good faith, and that neither the auctioneer nor his principal shall be allowed to deceive or impose upon the persons who gather at an auction for the purpose of making bids. It is therefore provided by the law, for the protection of the bidder, that at a sale by auction, announced to be without reserve, the highest bidder in good faith has an absolute right to the completion of the sale to him. Upon such a sale bids by the seller, or bids by any agent for him, are absolutely void. The public is interested in securing the advantages of fair and just competition among bidders, and in the prevention of favoritism or fraud in any form. The highest bidder in good faith, at a sale without reserve, is entitled to the property; and, if it should appear that the property was



in reality knocked down by the auctioneer upon a higher but fraudulent bid in the interest of the seller, a suit can be maintained in the Superior Court to compel the recognition of the rights of the bidder in good faith, and the delivery of the property to him upon payment of the amount of his bid.

Civil Code, Section 1796.

Section 89.—FRAUDS UPON THE BUYER.—Sometimes the seller, for the purpose of increasing the price of the property sold at auction, will employ puffers to bid up the property, thus giving it a fictitious value, and often inducing credulous bidders to increase their bids beyond what they had any idea of offering. The law provides, without any qualification, that the employment of puffers at an auction sale by the seller, without the knowledge of the buyer, is a fraud upon the buyer, which entitles him to rescind his purchase.

Civil Code, Section 1797.

Section 90.—AUCTIONEER'S MEMORANDUM OF SALE BINDS BOTH PARTIES.—When property is sold by auction, an entry made by the auctioneer in his sale book, at the time of the sale, giving the names of the person for whom he sells and the buyer, and describing the thing sold, the price, and the terms of sale, binds both the seller and the buyer, in the same manner as though the memorandum had been made by themselves.

Civil Code, Section 1798.

## WAREHOUSE LAW

Section 91.—WAREHOUSE RECEIPTS.—The most common form of storage known to business is that where the owner of a warehouse receives property on storage for a stated compensation. The warehouseman, upon receiving the property, must give a receipt for it, which receipt must show on its face that a contract for storage has been entered into between the owner of the goods and the



warehouseman, the latter to store the goods, and the former to pay for that service. A warehouseman cannot issue any valid receipt for any merchandise, grain, or other product or thing of value, unless the property has actually been received by him and is in the warehouse or under his control at the time; and no second warehouse receipt can be issued, so long as a former receipt is outstanding and uncanceled in whole or in part. A warehouse receipt is a negotiable instrument, and may be transferred by indorsement, and a transfer of the receipt is a good delivery of the goods represented by it. But it is only persons who pursue the calling of warehousemen—that is, receive and store goods in a warehouse as a business for profit—that have power to issue a technical warehouse receipt, the transfer of which will be considered by the law a good delivery of the property represented by the receipt. Therefore, such a receipt issued by one who is not in that business for profit, even though he receives the goods, will not have given to it by law the character of a negotiable instrument. In every case where a warehouseman receives property in a warehouse as a business for profit, the warehouse receipt is negotiable, and a transfer of the receipt in good faith, by indorsement to another, passes the title to the goods covered by the receipt.

Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms—

- (a) The location of the warehouse where the goods are stored,
- (b) The date of issue of the receipt,
- (c) The consecutive number of the receipt,
- (d) A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order,
- (e) The rate of storage charges,
- (f) A description of the goods or of the packages containing them,

(g) The signature of the warehouseman, which may be made by his authorized agent,

(h) If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership, and

(i) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

Act of the Legislature, approved March 19th, 1909.

#### Section 92.—NEGOTIABILITY OF WAREHOUSE RECEIPT.—

A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a non-negotiable receipt.

A receipt in which it is stated that the goods received will be delivered to the bearer, or to the order of any person named in such receipt, is a negotiable receipt.

When more than one negotiable receipt is issued for the same goods, the word "duplicate" shall be plainly placed upon the face of every such receipt, except the one first issued. A warehouseman shall be liable for all damage caused by his failure so to do to anyone who purchased the subsequent receipt for value supposing it to be an original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt.

A non-negotiable receipt shall have plainly placed upon its face by the warehouseman issuing it, "non-negotiable," or "not negotiable." In case of the warehouseman's failure so to do, a holder of the receipt who purchased it for value supposing it to be negotiable, may at his option, treat such receipt as imposing upon the

warehouseman the same liabilities he would have incurred had the receipt been negotiable.

Act of the Legislature, approved March 19th, 1909.

Section 93.—REMOVAL OF PROPERTY BY WAREHOUSEMAN.—No warehouseman can sell or encumber, or ship or remove beyond his control, any property for which a receipt has been given by him, without the consent in writing of the holder of the receipt, and the consent of the holder must be plainly indorsed on the receipt.

Act of the Legislature, approved March 19th, 1909.

Section 94.—DELIVERY OF PROPERTY BY WAREHOUSEMAN.—A warehouseman, in the absence of some lawful excuse provided by this act, is bound to deliver the goods upon a demand made either by the holder of a receipt for the goods or by the depositor, if such demand is accompanied with—

An offer to satisfy the warehouseman's lien;

An offer to surrender the receipt if negotiable, with such endorsements as would be necessary for the negotiation of the receipt; and

A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the warehouseman.

In case the warehouseman refuses or fails to deliver the goods in compliance with a demand by the holder or depositor so accompanied, the burden is upon the warehouseman to establish the existence of a lawful excuse for such refusal.

A warehouseman is justified in delivering the goods, subject to the above provisions, to one who is—

The person lawfully entitled to the possession of the goods, or his agent;

A person who is either himself entitled to delivery by the terms of a non-negotiable receipt issued for the

goods, or who has written authority from the person so entitled either indorsed upon the receipt or written upon another paper; or

A person in possession of a negotiable receipt by the terms of which the goods are deliverable to him or order or to bearer, or which has been indorsed to him or in blank by the person to whom delivery was promised by the terms of the receipt or by his mediate or immediate indorsee.

Where a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouseman will be liable as for conversion to all having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by law; and though he delivered the goods as authorized by law, he will still be liable if prior to such delivery he had either been requested, by or on behalf of the person lawfully entitled to a right of property or possession in the goods, not to make such delivery, or had information that the delivery about to be made was to one not lawfully entitled to the possession of the goods.

Where a warehouseman delivers goods for which he had issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the receipt, he will be liable to any one who purchases for value in good faith such receipt, for failure to deliver the goods to him, whether such purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman; and

Where a warehouseman delivers part of the goods for which he had issued a negotiable receipt and fails either to take up and cancel such receipt, or to place plainly upon it a statement of what goods or packages have been delivered, he will be liable, to any one who purchases for value in good faith such receipt, for failure to deliver all the goods specified in the receipt, whether such purchaser acquired title to the receipt before or after the delivery



of any portion of the goods by the warehouseman; unless the goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature.

Material and fraudulent alteration of a receipt will not excuse the warehouseman who issued it from liability to deliver, according to the terms of the receipt as originally issued, the goods for which it was issued, but will excuse him from any other liability to the person who made the alteration, and to any person who took with notice of the alteration. Any purchaser of the receipt for value without notice of the alteration will acquire the same rights against the warehouseman which such purchaser would have acquired if the receipt had not been altered at the time of the purchase.

Where a negotiable receipt has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient sureties to be approved by the court to protect the warehouseman from any liability or expense, which he or any person injured by such delivery may incur by reason of the original receipt remaining outstanding. The court may also in its discretion order the payment of the warehouseman's reasonable costs and counsel fees.

The delivery of the goods under an order of the court will not relieve the warehouseman from liabilities to a person to whom the negotiable receipt has been negotiated for value without notice of the proceedings or of the delivery of the goods.

A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty by the warehouseman that such receipt is an accurate copy of an original receipt properly issued and uncanceled at the date of the issue of the duplicate, but imposes upon him no other liability.

Act of the Legislature, approved March 19th, 1909.



**Section 95.—LIABILITY OF WAREHOUSEMAN.**—If some one other than the depositor or person claiming under him has a claim to the title or possession of the goods, and the warehouseman has information of such claim, the warehouseman will be excused from liability for refusing to deliver the goods, either to the depositor or person claiming under him or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead. If an adverse claimant does not bring suit and serve summons on the warehouseman within forty-eight hours after the service of notice of his adverse claim, such failure will act as a complete abandonment of such adverse claim.

A warehouseman will be liable to the holder of a receipt for damages caused by the non-existence of the goods or by failure of the goods to correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that packages containing the goods are said to contain goods of a certain kind, or by words of like purport, such statements, if true, will not make liable the warehouseman issuing the receipt, although the goods are not of the kind which the marks or labels upon them indicate, or of the kind they were said to be by the depositor.

A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise; but he will not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care.

A warehouseman shall keep the goods so far separate from goods of other depositors, and from other goods of the same depositor for which a separate receipt has been

issued, as to permit at all times the identification and re-delivery of the goods deposited.

If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade. In such case the various depositors of mingled goods shall own the entire mass in common, and each depositor shall be entitled to such portion thereof as the amount deposited by him bears to the whole. The warehouseman will be severally liable to each depositor for the care and re-delivery of his share of such mass to the same extent and under the same circumstances as if the goods had been kept separate.

If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they cannot thereafter, while in the possession of the warehouseman, be attached by garnishment or otherwise, or be levied upon under an execution, unless the receipt be first surrendered to the warehouseman, or its negotiation enjoined. The warehouseman will in no case be compelled to deliver up the actual possession of the goods until the receipt is surrendered to him or impounded by the court.

Section 96.—WAREHOUSEMAN'S LIABILITY FOR DELIVERING PROPERTY TO WRONG PERSON.—A warehouseman must use ordinary care and diligence to ascertain whether an indorsement is genuine before delivering the property. And if he delivers the property to a person who has no right to it, when he might have ascertained the truth by the exercise of ordinary care and diligence, he will be liable to the owner of the goods.

Section 97.—WAREHOUSEMAN'S LIABILITY FOR LOSS BY FIRE.—No warehouseman is responsible for any loss or damage to property by fire while in his custody, if he exercises reasonable care and diligence for its protection and preservation. If the property in his warehouse is destroyed by fire, in order to make him liable for the loss,

it must be shown that his own neglect was the cause of the fire, or that, a fire occurring, he had the opportunity to save the property, but neglected to do so, with the means at hand.

Statutes of 1877, pp. 949, 950.

Section 98.—SALE OF PROPERTY FOR STORAGE CHARGES.

A warehouseman has a lien on goods deposited or on the proceeds thereof in his hands, for all lawful charges for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, cooping and other charges and expenses in relation to such goods; also for all reasonable charges and expenses for notice, and advertisements of sale, and for sale of the goods where default has been made in satisfying the warehouseman's lien.

A warehouseman's lien may be enforced against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted; and against all goods belonging to others which have been deposited at any time by the person who is liable as debtor for the claims in regard to which the lien is asserted, if such person was in legal possession of the goods when they were deposited.

Statutes of 1919, Chapter 250.

A warehouseman loses his lien upon goods, by surrendering possession thereof, or by refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of this act.

If a negotiable receipt is issued for goods, the warehouseman shall have no lien thereon, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is claimed.

A warehouseman having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied.

A warehouseman's lien for a claim which has become due may be satisfied as follows: The warehouseman must give a written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice must be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified. The notice must contain—

(a) An itemized statement of the warehouseman's claim, showing the sum due at the time of the notice and the date or dates when it became due,

(b) A brief description of the goods against which the lien exists,

(c) A demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue shall be paid on or before the day mentioned, not less than ten days, from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination, according to the due course of post, if the notice is sent by mail, and

(d) A statement that unless the claim is paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place.

In accordance with the terms of a notice so given, a sale of the goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale must be had in the place where the lien was acquired, or, if such place is manifestly unsuitable for the purpose, at the nearest suitable place. After the time for the payment of the claim specified in the notice to the depositor has elapsed, an advertisement of the sale, describing the goods to be sold, and stating the name of the owner or person on whose account the goods are held, and the time and place of the sale, must be published once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale must not be less than fifteen days from



the time of the first publication. If there is no newspaper published in such place, the advertisement must be posted at least ten days before such sale in not less than six conspicuous places therein.

From the proceeds of such sale the warehouseman must satisfy his lien, including the reasonable charges of notice, advertisement, and sale. The balance, if any, of such proceeds must be held by the warehouseman, and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the goods.

At any time before the goods are sold any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The warehouseman must deliver the goods to the person making such payment, if he is a person entitled to the possession of the goods, on payment of charges thereon. Otherwise the warehouseman must retain possession of the goods according to the terms of the original contract of deposit.

If the goods are of a perishable nature, or by keeping will deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature, will be liable to injure other property, the warehouseman may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods, and to remove them from the warehouse, and in the event of the failure of such person to satisfy the lien and to remove the goods within the time specified, the warehouseman may sell the goods at public or private sale without advertising. If the warehouseman after a reasonable effort is unable to sell such goods, he may dispose of them in any lawful manner, and will incur no liability by reason thereof.



After goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature, the warehouseman will not thereafter be liable for failure to deliver the goods to the depositor, or owner of the goods, or to a holder of the receipt given for the goods when they were deposited, even if such receipt be negotiable.

Section 99.—NEGOTIATION OF WAREHOUSE RECEIPT.—A negotiable receipt may be negotiated by delivery where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer; or where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the receipt has indorsed it in blank or to bearer.

Where, by the terms of a negotiable receipt, the goods are deliverable to bearer, or where a negotiable receipt has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the receipt must thereafter be negotiated only by the indorsement of such indorsee.

A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are, by the terms of the receipt, deliverable. Such indorsement may be in blank, to bearer, or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer, or to another specified person. Subsequent negotiation may be made in like manner.

A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee.

A non-negotiable receipt cannot be negotiated, and the indorsement of such a receipt gives the transferee no additional right.

A negotiable receipt may be negotiated by the owner thereof; or by any person to whom the possession or

custody of the receipt has been entrusted by the owner, if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been entrusted, or if at the time of such entrusting the receipt is in such form that it may be negotiated by delivery.

A person to whom a negotiable receipt has been duly negotiated acquires thereby such title to the goods as the person negotiating the receipt to him had, or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had, or had ability to convey to a purchaser in good faith for value; and he also acquires the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him.

A person to whom a receipt has been transferred but not negotiated, acquires thereby, as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor.

If the receipt is non-negotiable such person also acquires the right to notify the warehouseman of the transfer to him of such receipt, and thereby to acquire the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt.

Prior to the notification of the warehouseman by the transferor or transferee of a non-negotiable receipt, the title of the transferee to the goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by a notification to the warehouseman by the transferor, or a subsequent purchaser from the transferor, of a subsequent sale of the goods.

Where a negotiable receipt is transferred for value by delivery, and the indorsement of the transferor is essen-

tial for negotiation, the transferee acquires a right against the transferor to compel him to indorse the receipt, unless a contrary intention appears. The negotiation will take effect as of the time when the indorsement is actually made.

A person who for value negotiates or transfers a receipt by indorsement or delivery, including one who assigns for value a claim secured by a receipt, unless a contrary intention appears, warrants, that the receipt is genuine; that he has a legal right to negotiate or transfer it; that he has knowledge of no fact which would impair the validity or worth of the receipt; and that he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose, whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented thereby.

The indorsement of a receipt will not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfill their respective obligations.

A mortgagee, pledgee or holder for security of a receipt who in good faith demands or receives payment of the debt for which such receipt is security, whether from a party to a draft drawn for such debt or from any other person, will not by so doing be deemed to represent or to warrant the genuineness of such receipt or the quantity or quality of the goods therein described.

The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake, or duress to entrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake, or duress.

Where a person having sold, mortgaged, or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged, or pledged the negotiable receipt representing such goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale, or other disposition thereof, to any person receiving the same in good faith, for value and without notice of the previous sale, mortgage or pledge, will have the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation.

Where a negotiable receipt has been issued for goods, no seller's lien or right of stoppage in transitu will defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated, whether such negotiation be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transitu.

Section 100.—FRAUD BY WAREHOUSEMAN.—A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a receipt knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his control at the time of issuing such receipt, will be guilty of a crime, and upon conviction will be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

A warehouseman, or any officer, agent, or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods, knowing that it contains any false statement, will be guilty of a crime, and upon conviction will be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.



A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods, knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word "duplicate," except in the case of a lost or destroyed receipt, will be guilty of a crime, and upon conviction may be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

Where there are deposited with or held by a warehouseman goods of which he is owner, either solely or jointly or in common with others, such warehouseman, or any of his officers, agents, or servants who, knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership, will be guilty of a crime, and upon conviction may be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

A warehouseman, or any officer, agent, or servant of a warehouseman, who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery, will be guilty of a crime, and upon conviction may be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, will be guilty of a crime, and upon conviction may be punished for each offense by imprison-



Section 103, page 163, "Business Law for Business Men"—AGRICULTURAL WAREHOUSES—The licensing of warehouses where agricultural products are stored is provided for by a new law. The Director of the State Department of Agriculture is given the regulation and control of agricultural warehouses and the license is to be granted by him upon the giving of a bond to the State of California by the warehouse man. Every warehouseman conducting a warehouse licensed under this act shall receive for storage therein, so far as its capacity permits, any agricultural product of the kind customarily stored therein by him which may be tendered to him in a suitable condition for warehousing, in the usual manner in the ordinary and usual course of business, without making any discrimination between persons desiring to avail themselves of warehouse facilities.

Every warehouseman conducting a warehouse licensed under this act shall keep the agricultural products therein of one depositor so far separate from agricultural products of other depositors, and from other agricultural products of same depositor for which a separate receipt has been issued, as to permit at all times the identification and redelivery of the agricultural products deposited; but if authorized by agreement or by custom, a warehouseman may mingle fungible agricultural products with other agricultural products of the same kind and grade, and shall be severally liable to each depositor for the care and redelivery of his share of such mass, to the same extent and under the same circumstances as if the agricultural products had been kept separate, but he shall at no time while they are in his custody mix fungible agricultural products of different grades.

For all agricultural products stored for state, interstate or foreign commerce, in a warehouse licensed under this act original receipts shall be issued by the warehouseman conducting the same, but no receipts shall be issued except for agricultural products actually stored in the warehouse at the time of the issuance thereof. Act of the Legislature of California, approved June 3, 1921; in effect August 3, 1921.



ment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Act of the Legislature, approved March 19, 1909.

Section 101.—INSURANCE ON STORED PROPERTY.—Both the owner of the goods and the warehouseman have an insurable interest in the property, and if the owner does not insure against loss by fire the warehouseman can insure for his benefit.

Section 102.—LIABILITY FOR LOSS BY REASON OF DEFECTIVE BUILDING.—A warehouseman is bound in the exercise of reasonable care to make reasonable inspection from time to time to see that his building remains safe and in proper condition. When a warehouseman receives goods in his warehouse for storage, he must be deemed to have held out to the public his building as a proper and fit building in which to store goods. Buildings of this character are liable to deteriorate. They may be weakened by storms and winds, and, when constructed upon piles over waters or low lands, the piles may decay and the foundation become weak, endangering the structure. A warehouseman, therefore, in the exercise of reasonable care, owes a duty to his patrons of making reasonable inspection from time to time to see that the building remains safe and in a proper condition.

Section 103.—FOOD WAREHOUSES.—The Legislature of 1919 passed a law regulating the business of food warehousemen, which is as follows:

Sec. 1. This act shall be known as the "food warehousemen act," and shall apply to the public utilities herein described. The term "food commodities" as used in this act shall be construed to mean all products, stuffs, preparations, substances, or articles which are customary or proper for food for human beings, and shall include meat and meat products, fruit, vegetables, fresh fish, shellfish, game, poultry, eggs, butter, cheese and milk.

(a) *Definitions.*—Sec. 2. The term “commission” when used in this act means the railroad commission of the State of California. The term “commissioner” when used in this act means one of the members of the commission. The term “corporation” when used in this act, includes a corporation, a company, an association and a joint stock association. The term “person” when used in this act, includes an individual, a firm and a co-partnership. The term “food warehouseman” as used in this act shall be construed to mean and shall include every person, or corporation, their lessees, trustees, receivers or trustees appointed by any court whatsoever owning, controlling, operating, or managing any building, structure, warehouse, elevator or plant in which commodities, regularly received from the public generally, are stored for compensation, including cold storage plants and refrigerating plants, but not including private homes, hotels, restaurants or exclusively retail establishments or others not storing articles of food for other persons for compensation. Every person, or corporation controlling, operating, or managing any building, structure, warehouse, elevator, or plant as aforesaid, shall be deemed to be engaged in the storage of food commodities within the meaning of this act.

(b) *Food Warehouses Declared Public Utilities.*—Sec. 3. Every food warehouseman doing business in the State of California is hereby declared to be a public utility, and subject to the jurisdiction, control and regulation of the railroad commission of the State of California as hereinafter in this act provided.

No food warehousemen shall engage in the storage of food commodities in the State of California, except in accordance with the provisions of this act.

(c) *Discrimination by Warehousemen Unlawful.*—Sec. 4. It shall be unlawful for any food warehouseman, doing business in the State of California, to discriminate, or attempt to discriminate between persons, firms or corporations offering food commodities for storage or desir-

ing to avail themselves of the warehousing or storage facilities afforded by such food warehouseman; or to accept food commodities from any person, firm or corporation at rates or charges in excess of rates or charges exacted or received from other persons, firms or corporations for the same or substantially similar warehousing or storage service; or to grant, allow, or deduct from the rates or charges exacted or received for warehousing or storage service from any person, firm, or corporation any rebate, discount, deduction, concession, refund, or remittance not granted and allowed to all other persons, firms, or corporations under the same or substantially similar circumstances and conditions; or to make or give, or attempt to make or give, any preference or advantage to any person, firm or corporation not made or given to every other person, firm or corporation; or by any scheme of rebates, discounts, deductions, concessions, refunds, remittances, collateral contracts, discriminating charges, discriminating rates, or in the service or facilities afforded, or by any other device whatsoever, discriminate or show preference, or attempt to discriminate or show preference, between persons, firms, or corporations offering food commodities for storage; or by any of the practices or devices aforesaid to monopolize or attempt to monopolize, or combine, or conspire with others to monopolize in any locality the business of storing food commodities; and it shall likewise be unlawful for any person, firm or corporation to solicit, accept, receive or attempt to obtain from any food warehouseman any rebate, discount, deduction, concession, refund, or remittance, or to solicit, accept, receive, or attempt to obtain from any food warehouseman, any preference, or advantage, either in rates or charges, or in service or facilities afforded.

The railroad commission shall have full power to determine any fact or question arising under this section and is empowered after hearing by appropriate order to enforce the provisions thereof, and may by rule or order



establish from time to time such exceptions from the operation of the prohibitions of this section as it may consider just and reasonable.

(d) *Schedule of Rates to Be Filed.*—Sec. 5. Every food warehouseman doing business in the State of California shall file with the railroad commission within such time and in such form as the commission may designate and shall also print and keep open to public inspection at each and every building, structure, warehouse, elevator, or plant for the storing or warehousing of food commodities maintained by him in said state, schedules showing all rates and charges, which are in force for warehousing and storage services of every description, including sorting, handling, weighing, elevating, and packing charges, and all charges directly or indirectly connected with such services, together with all rules and regulations which in any manner affect or relate to rates or charges, and showing plainly when the same became effective, such rates to be uniform in their operation and to apply with equal force and effect to all persons, firms or corporations dealing with said food warehouseman. The railroad commission shall have power after hearing to fix and determine any such rate, charge, rule or regulation, and prescribe by order such changes in the form of the schedules referred to in this section as it may find to be just and reasonable. Unless the commission otherwise orders, no changes shall be made by any food warehouseman in any rate or charge, or in any rules or regulations, affecting rates or charges, except by permission of the railroad commission after thirty days' notice to the commission and to the public as herein provided. Such notice shall be given by filing with the commission and keeping open to public inspection, as aforesaid, new schedules stating plainly the change or changes to be made in the schedule or schedules then in force, and the time when the change or changes go into effect. The commission, for good cause shown, may allow changes without requiring the thirty days' notice herein provided for, by an order speci-

fyng the changes so to be made and the time when they shall take effect, and the manner in which they shall be filed and published. No food warehouseman shall engage in the business of storing food commodities unless the rates and charges upon which the same are stored are filed and open to public inspection as aforesaid. No food warehouseman shall refund or remit in any manner or by any device, any portion of the rates or charges filed and open to public inspection as aforesaid, or demand, collect, or receive, directly or indirectly from any person, firm or corporation, any different sum for warehousing or storage services than the rates and charges filed and open to public inspection as aforesaid, or directly or indirectly make any charge for such services not shown by the schedule aforesaid; nor shall any person, firm, or corporation solicit, accept, receive, or attempt to obtain from any food warehouseman any rate or charge not filed and open to public inspection as aforesaid.

The railroad commission shall have full power and jurisdiction to determine any fact or question arising under this section and is hereby empowered after hearing by appropriate order to enforce the provisions thereof and may by rule or order establish from time to time such exceptions from the operation of the prohibitions aforesaid as it may consider just and reasonable.

(e) *Contracts in Violation Void.*—Sec. 6. Every contract, expressed or implied, made by any person, firm or corporation in violation of the provisions of section four or section five of this act, is declared to be illegal and to be utterly void and no recovery thereon shall be had.

(f) *Procedure as Specified in Public Utilities Act.*—Sec. 7. In all respects in which the railroad commission has power and authority under the provisions of section four or section five of this act, applications and complaints to the commissions on motion or otherwise may be made and filed with the railroad commission, process issued, hearings held, opinions, orders and decisions made

and filed, petitions for rehearing filed and acted upon, and petitions for writs of review or mandate filed with the supreme court of the State of California, considered and disposed of by said court, in the manner, under the conditions and subject to the limitations and with the effect specified in the public utilities act.

(g) *Action by Attorney General to Collect Rebates, Etc.*—Sec. 8. The attorney general of the State of California is authorized and directed, whenever he has reasonable grounds to believe that any person, firm or corporation has knowingly accepted or received from any food warehouseman, directly or indirectly, any rebate, discount, deduction, concession, refund or remittance from the rates or charges filed and open to public inspection as in section five of this act required, to prosecute a civil action in the name of the people of the State of California in the proper court to collect three times the total sum of such rebates, discounts, deductions, concessions, refunds, or remittances so accepted or received within three years prior to the commencement of such action.

(h) *Action to Enjoin Violations.*—Sec. 9. Any person, firm or corporation may maintain an action to enjoin a continuance of any act or acts in violation of section four or section five of this act, or of any order, rule or regulation to the railroad commission made or enacted by said commission pursuant to the power and authority vested in said commission by said sections of this act, and, if injured thereby, for the recovery of damages in an amount equal to three times the amount of actual damages sustained. If in such action, the court shall find that the defendant is violating section four or section five of this act, or any order, rule, or regulation of the railroad commission, made or enacted by said commission, pursuant to the power and authority vested in said commission by said sections of this act, it shall enjoin the defendant from a continuance of such violation, and it shall not be necessary to allege or prove actual damage to plaintiff in addition thereto.

(i) *Penalty*.—Sec. 10. Any person or persons, or corporation, who, or which shall violate section four or section five of this act, or any order, rule, or regulation of the railroad commission made or enacted by said commission pursuant to the power and authority vested in said commission by said sections of this act, or who shall procure, aid or abet any person, firm or corporation in any such violation, shall be guilty of a misdemeanor, and upon conviction thereof, shall, if a person, be punished by a fine of not exceeding one thousand dollars, or by imprisonment in a county jail not exceeding six months or by both such fine and imprisonment, and, if a corporation, by a fine not exceeding three thousand dollars. In construing and enforcing the provisions of this act, the act, omission, or failure of any director, agent, employee, or other person acting for or employed by any person, firm or corporation, acting within the scope of his employment, shall in every case be also deemed to be the act, omission or failure of such person, firm, or corporation as well as that of such director, officer, agent, employee, or person.

(j) *Constitutionality*.—Sec. 11. If any section, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, sentences, clauses, or phrases be declared unconstitutional.

(k) *Purpose of Act*.—Sec. 12. The legislature hereby declares that the purpose of this act is to safeguard the public against the creation and perpetuation of monopolies, and to foster and encourage competition, by prohibiting unfair and discriminating practices by which fair and honest competition is destroyed. The legislature hereby further declares that food warehousemen, as defined in section two of this act, are engaged in a business,



tending to monopoly, and that by reason of such monopolistic tendency and by reason of its vital connection with the distribution of public necessities, such business is clothed with a public interest and subject to public regulation and control for the public welfare as a public utility, as in this act provided. This act shall be liberally construed that its beneficial purpose may be subserved. The remedies herein prescribed are cumulative. If any conflict shall arise between this act and the public utilities act, the latter shall prevail.

Act of the Legislature, approved May 5, 1919;  
in effect July 22, 1919.

Section 104.—COLD STORAGE WAREHOUSES.—Any person, firm or corporation desiring to operate a cold storage or refrigerating warehouse wherein shall be stored “articles of food” for a period exceeding thirty days, shall make application in writing to the state board of health for that purpose, stating the location of its plant or plants. On receipt of the application the state board of health shall cause an examination to be made into the sanitary condition of said plant or plants and if found to be in a sanitary condition and otherwise properly equipped for the business of cold storage, the state board of health shall cause a license to be issued authorizing the applicant to operate a cold storage or refrigerating warehouse for and during a period of one year. The license shall be issued upon payment by the applicant of a license fee to the state board of health for each and every warehouse or plant operated by applicant under the provisions of this act for all cold storage or refrigerating warehouses or plants having a capacity of ten thousand cubic feet, or less, a fee of fifteen dollars. For all cold storage or refrigerating warehouses or plants having a capacity of more than ten thousand cubic feet and less than fifty thousand cubic feet, a fee of thirty dollars. For all cold storage or refrigerating warehouses or plants having a capacity of more than fifty thousand cubic feet

Section 105, page 171, "Business Law for Business Men"—LIABILITY OF HOTEL KEEPERS—On page 172, after the word "contents" in the second line from the bottom of the page, insert "and all other miscellaneous effects, including wearing apparel and personal belongings, \$250."

(a) Suits to recover personal property. All civil actions for the recovery of personal property, wearing apparel, trunks, valises or baggage alleged to have been left at a hotel, boarding house, lodging house or apartment house, shall be begun within ninety days from and after the date of departure of the owner of said personal property, wearing apparel, trunks, valises or baggage from said hotel, boarding house, lodging house or furnished apartment house. Act of the Legislature of California, approved May 14, 1921; in effect July 14, 1921.



and less than one hundred thousand cubic feet, a fee of forty dollars. For all cold storage or refrigerating warehouses or plants having a capacity of one hundred thousand cubic feet or more, a fee of fifty dollars.

The secretary of the state board of health shall keep a full and correct account of all fees received under the provisions of this act, and shall, at least once each month, deposit all such fees collected with the state treasurer and make a detailed report covering same to the state controller, and such money shall be credited to the appropriation for the support of the pure food and drug laboratory; *provided, however*, that nothing in this act contained shall apply to cold storage or cold storage or refrigerating plants or warehouses as herein defined which are maintained or operated by restaurants, hotels, or exclusively retail establishments not storing articles of food for other persons.

All articles of food when deposited in cold storage shall be marked plainly on the containers in which they are packed or on the individual article with the date of receipt, in accordance with such rules and forms as may be prescribed by the state board of health, and when removed from cold storage shall be marked in like manner with the date of withdrawal.

Statutes of 1917, Chapter 110.

## HOTEL KEEPERS AND LODGING-HOUSE KEEPERS

Section 105.—LIABILITY OF HOTEL KEEPERS AND LODGING-HOUSE KEEPERS.—Hotel keepers (including boarding-house keepers) and lodging-house keepers have certain rights and liabilities fixed by the law. The language of the California statute referring to hotels is, "Inn keepers, hotel keepers, boarding and lodging-house keepers." There is no difference in the law between an inn and hotel. Both words mean the same thing. An inn is a



house which is held out to the public as a place where all transient persons who come will be received and entertained as guests, for compensation—a hotel. There is a difference between a hotel and a boarding-house, which is this: A hotel is a house where a keeper holds himself out as ready to receive all who may choose to come there and pay an adequate price for the entertainment; while the keeper of a boarding-house reserves the choice of comers and the terms of accommodation, contracting specially with each customer, and most commonly arranging for long periods and a definite abode. There is no difference in the law between the liability of hotel keepers, boarding-house keepers, and lodging-house keepers. The law puts them all in the same class with reference to their liability for the property of their guests, boarders or lodgers. Hotel keepers, boarding-house keepers, and lodging-house keepers in California are bound to use ordinary care and diligence in the protection and preservation of the personal property, other than money, of their guests, boarders, or lodgers coming into their houses, and they are liable for losses of or injuries to such property, if occasioned by their lack of ordinary care and diligence. The law passed by the Legislature in 1895 limited the liability of hotel keepers, boarding and lodging-house keepers, to losses occasioned by their lack of ordinary care and diligence, but does not include money within its terms; consequently it seems that the greater and more exacting care must be taken of the money of a guest, boarder, or lodger than is required to be exercised with reference to other kinds of personal property. The law provides, however, that in no case of loss of or injury to personal property, other than money, shall the liability of the hotel keeper, boarding-house keeper, or lodging-house keeper exceed the sum of \$100 for each trunk and its contents, \$50 for each valise and traveling bag and contents, and \$10 for each box, bundle or package and contents, placed under his care, unless he has consented in writing with the owner to assume a

greater liability. It is customary to give receipts in writing for money left or deposited by guests, and in such case the liability would be for the amount shown by the receipt, in case of loss.

Civil Code, Section 1859.

Section 106.—EXEMPTION FROM LIABILITY IN CERTAIN CASES.—If a hotel keeper, or boarding-house or lodging-house keeper, keeps a fireproof safe, and gives notice to his guest, boarder, or lodger that he keeps such a safe, and will not be liable for money, jewelry, documents, or other articles of unusual value and small compass, unless such articles are placed in the safe, he will not be liable for any loss or damage to such articles if not deposited with him to be placed in his safe, provided, that he does not by his own acts contribute to the loss of the property. In any case, the hotel keeper, boarding-house keeper, or lodging-house keeper shall not be liable for more than \$250 for loss of any money, jewelry, or documents, or other articles of unusual value and small compass, belonging to any guest, boarder, or lodger, unless he shall have given a receipt in writing for such property. Just what the law means by a "receipt in writing," and how that fact alone should make the liability greater, is difficult to understand; but it is probable that the Legislature meant to provide, by this language, that where a receipt is given acknowledging a greater value, then the liability for the loss shall be equal to the admitted value of the property, and that where no receipt is given, no value in excess of \$250 shall be left to be determined by the conflicting testimony of witnesses. The notice provided for by law need not be in any particular form, and it may be given personally to the guest, boarder, or lodger, or it may be given by putting up a printed notice in a prominent place in the office or in the rooms of the house.

Civil Code, Section 1860.

Section 107.—WHAT PROPERTY MUST BE DEPOSITED IN THE SAFE.—Under the notice provided for by law to be given by the hotel keeper, boarding-house keeper, or lodging-house keeper, he cannot demand that his guest put every article of small compass and peculiar value, or all his money or jewelry, in the safe. The law does not apply to such articles as the guest needs to have about him, for constant and daily use, even though for personal adornment. Jewelry worn by a woman daily need not, when not actually upon her person, be deposited in the safe, in order to make the hotel keeper or boarding and lodging-house keeper responsible for its loss in his house. If worn daily, the jewelry does not cease to be needed for present personal use when its possessor lays it aside upon retiring for the night. Nor is it necessary, in order to render the hotel keeper liable, that the property should have been delivered into his exclusive personal possession. The guest may retain personal possession of his goods within the house—as of his trunk and its contents, his wearing apparel, and other articles in his room, and any jewelry or valuables carried or worn around his person—without discharging the keeper of the house from responsibility.

Section 108.—LIABILITY OF HOTEL, BOARDING-HOUSE, AND LODGING-HOUSE KEEPERS FOR LOSS BY FIRE.—In some of the states of the Union the keeper of a hotel is held to be an insurer against loss by fire, and is bound to pay for property lost by a fire, no matter from what cause occurring. But this extreme view is not the law of California. In this state, when a fire occurs, and destroys or injures the property of a guest, boarder, or lodger, the keeper of the house is not liable to pay the damage if he can show that the fire was purely accidental, and that neither his negligence nor the negligence of his servants or employees contributed to the loss. But if the fire occurs through the negligence of the proprietor, or by the neglect of any of his servants or employees, he will be

liable for damage to the property of his guests. Thus, if a cook or fireman negligently leaves coals or ashes containing fire in a position which ignites and destroys the house, or if a chambermaid negligently sets fire to the furniture of a room, or if a porter or bellboy sent to build a fire in the room of a guest sets fire to the house, or if a sufficient watch is not kept, or reasonable protection and guard against fire is not maintained, the keeper of a hotel, boarding-house, or lodging-house will be liable in this state for loss by fire. But where the keeper of the house has done all that a reasonable man can do to guard against the danger from fire, and a fire occurs, without any negligence on his own part or on the part of any of his servants or employees, he will not be liable. Thus, if a fire starts in an adjoining building, or in some other quarter of the town, and reaches and sweeps away his own house; or if a fire occurs by reason of lightning, earthquake, or floods, he will not be liable for losses to his guests, boarders, or lodgers. Indeed, it may be said that it is the law of this state that in no case of loss by fire is the keeper of a hotel, boarding-house, or lodging-house liable for the property of guests where the fire was purely accidental, and was not occasioned by anything which reasonable care and prudence on the part of himself or his servants and employees might have avoided or prevented.

Section 109.—LIABILITY OF HOTEL, BOARDING-HOUSE, AND LODGING-HOUSE KEEPERS FOR LOSS BY THEFT.—The liability of the keeper of a hotel, boarding-house, or lodging-house for losses of the property of his guests, boarders, or lodgers, by theft, depends upon whether the thieves come from within the house. If the property is stolen by some one employed in the house, in any capacity, or even by a guest, boarder or lodger, without the fault of the person from whom the property is taken, the keeper of the house will be liable for its loss. But if burglars or rioters break into the house and steal, this will constitute an act which the keeper of the house could



not very well have had any control over, and hence he will not be liable, if he kept his house secured in a reasonable manner.

Section 110.—LIABILITY OF HOTEL, BOARDING-HOUSE, AND LODGING-HOUSE KEEPERS FOR LOSS OF BAGGAGE.—The liability for loss of baggage begins at the moment the hotel, boarding-house, or lodging-house keeper takes charge of the baggage, whether at the house or elsewhere. Therefore, if a porter solicits a guest at a railroad train, or ferry, or depot, and receives the traveler's check, and indicates the conveyance which the traveler shall take to the house, the keeper is responsible from that moment for the safe delivery of the baggage at the guest's room, and, if it is lost on the way, the keeper of the house is liable. After the baggage has reached the house, the keeper is responsible for its safety, and will be liable for its loss, if the owner of the baggage is not guilty of any negligence which contributes to the loss. After the baggage leaves the house, to be taken to a depot, train, or ferry by the employees of the keeper of the house, his liability continues until the baggage safely reaches its destination there.

Section 111.—STATEMENT OF CHARGES, ETC., TO BE POSTED BY HOTEL, BOARDING-HOUSE, AND LODGING-HOUSE KEEPERS.—A statement of charges is required by the law to be posted in every hotel, boarding-house, and lodging-house in this state. Every keeper of a hotel, inn, boarding or lodging-house shall post, in a conspicuous place, in the office or public room, and in every bedroom of said hotel, boarding-house, inn, or lodging-house, a printed copy of this section, and a statement of charges, or rate of charges, by the day, and for meals or items furnished, and for lodging. No charge or sum shall be collected or received by any such person for any service not actually rendered, or for any item not actually delivered, or for any greater or other sum than he is entitled to by the general rules and regulations of said hotel, inn, boarding

or lodging-house. For any violation of this section, or any provision herein contained, the offender shall forfeit to the injured party three times the amount of the sum charged in excess of what he is entitled to.

Civil Code, Section 1863.

Section 112.—LIEN ON BAGGAGE AND OTHER PROPERTY OF GUESTS.—Hotel, inn, boarding-house and lodging-house keepers shall have a lien upon the baggage and other property belonging to or legally under the control of their guests, or boarders, or lodgers which may be in such hotel, inn, or boarding or lodging-house for the proper charges due from such guests, or boarders, or lodgers, for their accommodation, board and lodging and room rent, and such extras as are furnished at their request, and for all money paid for or advanced to such guests, or boarders or lodgers, and for the costs of enforcing such lien, with the right to the possession of such baggage and other property, until such charges and moneys are paid; and unless such charges and moneys shall be paid within sixty days from the time when the same become due, said hotel, inn, boarding-house or lodging-house keeper may sell said baggage and property at public auction to the highest bidder, after giving notice of such sale by publication of a notice containing the name of the debtor, the amount due, a brief description of the property to be sold, and the time and place of such sale, once every week for four successive weeks prior to the day of sale, in a newspaper of general circulation in the county in which said hotel, inn, boarding-house or lodging-house is situated, and also by mailing, at least fifteen days before such sale, a copy of such notice addressed to such guest, boarder or lodger at his postoffice address, if known, and if not known, such notice shall be addressed to such guest, boarder or lodger at the place where such hotel, inn, boarding-house or lodging-house is situated; and after satisfying such lien out of the proceeds of such sale, together with any reasonable costs that

may have been incurred in enforcing said lien, the residue of said proceeds of sale, if any, shall upon demand made within six months after such sale, be paid by said hotel, inn, boarding-house, or lodging-house keeper to such guest, boarder or lodger; and if not demanded within six months from the date of such sale, such residue shall be paid into the treasury of the county in which such sale took place; and if the same be not claimed by the owner thereof, or his legal representatives, within one year thereafter, the same shall be paid into the general fund of said county; and such sale shall be a perpetual bar to any action against said hotel, inn, boarding-house or lodging-house keeper for the recovery of such baggage or property or of the value thereof, or for any damages growing out of the failure of such guest, boarder or lodger to receive such baggage or property; *provided, however*, that if any baggage or property becoming subject to the lien herein provided for does not belong to the guest, lodger or boarder who incurred the charges or indebtedness secured thereby, at the time when such charges or indebtedness was incurred, and if the hotel, inn, boarding or lodging-house keeper entitled to such lien received notice of such fact at any time before the sale of such baggage or property hereunder, then, and in that event, such baggage and property which is subject to said lien and did not belong to said guest, boarder or lodger at the time when such charges or indebtedness was incurred shall not be subject to sale in the manner hereinbefore provided, but such baggage and property may be sold in the manner provided by the Code of Civil Procedure for the sale of property under a writ of execution, to satisfy a judgment obtained in any action brought to recover the said charges or indebtedness.

Statutes of 1915, Chapter 650.

**Section 113.—APARTMENT HOUSE LIEN ON BAGGAGE AND OTHER PROPERTY.**—Keepers of furnished apartment houses shall have a lien upon the baggage and other

property of value belonging to their tenants or guests, which may be in such furnished apartment house, for the proper charges due from such tenants or guests, for their accommodation, rent, services, meals, and such extras as are furnished at their request, and for all moneys expended for them, at their request, and for the costs of enforcing such lien, with the right to the possession of such baggage and other property of value until such charges are paid, and such moneys are repaid; and unless such charges shall be paid and unless such moneys shall be repaid within sixty days from the time when such charges and moneys, respectively, become due, said keeper of a furnished apartment house may sell said baggage and property, at public auction to the highest bidder, after giving notice of such sale by publication of a notice containing the name of the debtor, the amount due, a brief description of the property to be sold, and the time and place of such sale, once every week, for four successive weeks, prior to the date of sale, in a newspaper of general circulation in the county in which said furnished apartment house is situated, and also by mailing, at least fifteen days prior to the date of sale, a copy of such notice addressed to such tenant or guest at his post-office address, if known, and if not known, such notice shall be addressed to such tenant or guest at the place where such furnished apartment house is situated; and, after satisfying such lien out of the proceeds of such sale, together with any reasonable costs that may have been incurred in enforcing said lien, the residue of said proceeds of sale, if any, shall, upon demand made within six months after such sale, be paid by said keeper of a furnished apartment house to such tenant or guest; and if not demanded within six months from the date of such sale, said residue, if any, shall be paid into the treasury of the county in which such sale took place; and if the same be not claimed by the owner thereof, or his legal representative, within one year thereafter, it shall be paid into the general fund of the county; and such sale shall



be a perpetual bar to any action against said keeper of a furnished apartment house for the recovery of such baggage or property, or of the value thereof, or for any damages growing out of the failure of such tenant or guest to receive such baggage or property.

Act of the Legislature, approved June 1, 1917;  
in effect July 31, 1917.

Section 114.—DEFRAUDING HOTEL KEEPERS.—Any person who obtains any food or accommodation at an hotel, inn, restaurant, boarding house, lodging house, or furnished apartment house without paying therefor, with intent to defraud the proprietor or manager thereof, or who obtains credit at an hotel, inn, restaurant, boarding house, lodging house, or furnished apartment house, by the use of any false pretense, or who, after obtaining credit or accommodation, absconds or surreptitiously removes his baggage therefrom without paying for his food or accommodations, is guilty of a misdemeanor. If a person is convicted of this offense, he is punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding \$500, or by both fine and imprisonment.

Act of the Legislature, approved April 30, 1919;  
in effect July 22, 1919.

Section 115.—SANITARY REGULATIONS.—An act of 1917 provides as follows:

(a) *Hotel Defined*.—Section 1. Every building or structure, kept as, used as, maintained as, or advertised as, or held out to the public to be, a place where sleeping or rooming accommodations are furnished to the public, or any part of the public, whether with or without meals, shall, for the purpose of this act, be deemed to be a hotel, and whenever the word "hotel" shall occur in this act, it shall be deemed to include lodging house and rooming house.

(b) *Clean Bedding, Etc.*—Sec. 2. All bedding, bedclothes, or bedcovering, including mattresses, quilts, blankets, sheets, pillows or comforters, used in any hotel in this state must be kept clean and free from all filth or dirt; *provided*, that no bedding, bedclothes or bedcovering, including mattresses, quilts, blankets, sheets, pillows or comforters, shall be used which is worn out or unfit for use by human beings according to the true intent and meaning of this act.

(c) *Infected Rooms Fumigated.*—Sec. 3. Any room in any hotel in this state which is or shall be infected with vermin or bedbugs or similar things, shall be thoroughly fumigated, disinfected and renovated until such vermin or bedbugs or other similar things are entirely exterminated.

(d) *Clean Rooms.*—Sec. 4. Every room in any hotel in this state used for sleeping purposes, must be kept free from any and every kind of dirt or filth of whatsoever nature, and the walls, floors, ceilings and doors of every such room shall be kept free from dirt.

(e) *Ventilation Devices.*—Sec. 5. Every room in any hotel, used for sleeping purposes, shall have devices, such as a window or transom, so constructed as to allow for proper and a sufficient amount of ventilation in each such room.

(f) *Size of Sheets.*—Sec. 6. Every bed, for the accommodation of any person or persons or guests, kept or used in any hotel in this state, must be provided with a sufficient supply of clean bedding and must be provided with sheets at least eighty-one inches wide and ninety-eight inches long; *provided, however*, that on every single bed there shall be sheets at least fifty inches wide and ninety-eight inches long. Every bed shall be supplied with clean sheets and pillow slips as often as assigned to a different person.

(g) *Individual Towels.*—Sec. 7. Every hotel, within this state, having a public washstand or washbowl, where different persons gather to wash themselves, must keep

a sufficient supply of clean individual towels for the use of such persons within easy access of or to such persons and in plain sight and view.

(h) *Penalty for Violation.*—Sec. 8. Every owner, manager, lessee or other person in charge of any hotel in this state who shall fail to comply with this act, whether through the acts of his agents or employees, or otherwise, shall be guilty of a misdemeanor and upon conviction shall be fined not more than two hundred dollars or shall be imprisoned for not more than three months; and every day that any hotel shall be kept in violation of any of the provisions of this act such keeping shall constitute a separate offense.

Act of the Legislature, approved May 11, 1917;  
in effect July 27, 1917.

Section 116.—CONSTRUCTION OF HOTELS.—See the subject, “Building Contracts.”

## LEASES

Section 117.—LEASES OF REAL ESTATE.—The Legislature of California has passed laws regulating by statute the making of leases of real estate. It is the policy of this state to discourage long leases, which have the effect of tying up property for many years, and therefore the law prescribes the longest terms for which real estate may be leased in California, and the courts have sustained these regulations as being wise and prudent.

Section 118.—TERM OF LEASE.—No lease or grant of land for agricultural or horticultural purposes for a longer period than fifteen years, in which shall be reserved any rent or service of any kind, shall be valid; provided, that any land of a municipality used for agricultural or horticultural purposes and upon which is discharged sewage or waste water may be leased for a period not exceeding twenty-five years.

Statutes of 1915, Chapter 176.

No lease or grant of any town or city lot for a longer period than ninety-nine years, in which shall be reserved any rent or service of any kind, shall be valid; *provided*, that the property of any municipality, or any minor or incompetent person, shall not be leased for a longer period than ten years, excepting that the sewer farm of a municipality and all waters and sewage used or discharged thereon may be leased for a period not exceeding twenty-five years; and excepting that the tidelands and submerged lands granted to any city by the state, or any lands belonging to such city adjacent to such tidelands and submerged lands, may be leased for a period not exceeding forty years if the grant from the State of California of the use of said tidelands and submerged lands does not provide specifically for a term of years for which said lands may be leased. Said tidelands and submerged lands and lands adjacent thereto can only be leased for industrial uses, the purposes of improvement and development of the harbor of said city, and the construction and maintenance of wharves, docks, piers or bulkhead piers or for other public uses and purposes consistent with the requirements of commerce or navigation at said harbor.

Act of the Legislature, approved May 21, 1917;  
in effect July 27, 1917.

Section 119.—WHEN VERBAL LEASE MAY BE MADE.—A lease for a term not exceeding one year may be made verbally, and need not be witnessed by any writing whatever.

Section 120.—WHEN LEASE MUST BE IN WRITING.—A lease for a term longer than one year must be in writing.

Section 121.—FORM OF LEASE.—A lease is not required to be in any particular form, so long as it can be ascertained from its terms what property is leased, the rent



reserved, and the term for which the lease is made. The lease must be signed by the parties, of course, but it is not required to be acknowledged. Without acknowledgment before a notary, and without recording, a lease is good between the parties to it. But, as the rights of creditors, and other claims of third parties, may involve the property in litigation, it is always safest and best to acknowledge and record a lease, as in this manner a binding notice of the execution and terms of the lease is given to the world. Following is a form of lease for common use in California:

THIS INDENTURE, made the.....day of.....  
....., 19....., witnesseth:

That I, ....., of  
the County of....., State of California,  
lessor, do hereby lease, demise, and let unto.....  
....., of the same place, lessee, the follow-  
ing described real estate situate, lying, and being in the  
County of....., State of California, and  
particularly described as follows, to-wit: .....

(Here insert description of property.)

To have and to hold, for the term of.....years, to-wit:  
from the.....day of....., 19.....,  
to the.....day of....., 19.....,  
yielding and paying therefor the rent of.....  
.....Dollars, Gold Coin of the United States  
of America; and the said lessee promises to pay the said  
rent in such Gold Coin, at and in the following times and  
installments, namely, .....Dollars on the  
.....day of....., 19.....,  
Dollars on the.....day of.....  
19....., and.....Dollars on the.....  
day of....., 19.....

(Or, in place of above, insert for monthly payments,  
as follows: In such Gold Coin, as follows, to-wit: the  
sum of.....Dollars per month, monthly  
in advance, on the.....day of each and every month  
during said term.)



And the said lessee promises to quit and deliver up the premises to the lessor or his agent or attorney, peaceably and quietly, at the end of the term, in as good order and condition (reasonable use and wear thereof, and damages by the elements excepted) as the same are now or may be put into, and to pay the rent as above stated during the term, and not to make or suffer any waste thereof, nor lease, nor underlet, nor permit any other person or persons to occupy or improve the same, or make, or suffer to be made, any alteration therein, without the consent of the lessor thereto in writing having been first obtained, and that the lessor may enter to view and make improvements, and to expel the lessee if he shall fail to pay the rent as aforesaid, or make or suffer any waste thereof.

And should default be made in the payment of any portion of said rent when due, the said lessor, his agent or attorney, may at his option terminate this lease, and re-enter and take possession of said property.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

.....(Seal.)

.....(Seal.)

Section 122.—FORM OF LEASE OF AGRICULTURAL LANDS.  
The following is a form of lease of agricultural lands:

THIS INDENTURE, made the.....day of  
....., in the year of our Lord one thousand nine  
hundred and....., between.....  
....., of the County of.....  
....., State of California, the party of the first part,  
and ..... of said County  
and State, the party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the rents, covenants, and agreements hereinafter mentioned, reserved and contained on the part of the said party of the second part, to be paid, kept, and performed, has granted, demised, and to farm let, and

by these presents does grant, demise, and to farm let, unto the said party of the second part, all those lots, pieces, or parcels of land, situate in the County of \_\_\_\_\_, State of California, and particularly described as follows, to-wit:

(Here describe land.)

for the term of \_\_\_\_\_ years from the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

To have and to hold the said demised premises, unto the party of the second part, his heirs, executors, and administrators, for his and their sole and proper use and benefit, for and during the term aforesaid, together with all the tenements and hereditaments thereunto appertaining; and all the stock and farming utensils, of every name and nature, now being in or upon the same, belonging to the said party of the first part.

In consideration whereof, the said party of the second part hereby covenants and agrees to and with the party of the first part, that he will occupy, till, and in all respects cultivate the premises above mentioned, during the term aforesaid, in a farmerlike manner, and according to the usual course of farming in the neighborhood; that he will not commit any waste or damage or suffer any to be done; that he will, at his own cost and expense, keep the fences and buildings on the said premises in good repair, reasonable wear thereof and damages by the elements excepted; that he will pay the party of the first part as rental for said premises for said term the full sum of \_\_\_\_\_ Dollars, Gold Coin of the United States, as follows, to-wit: \_\_\_\_\_

\_\_\_\_\_ Dollars on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, and the remainder in equal yearly payments of \_\_\_\_\_ Dollars, on the \_\_\_\_\_ day of \_\_\_\_\_, in each and every year during said term of \_\_\_\_\_ years; that this lease cannot and will not be assigned without the written consent of the lessor; and that he will give up and yield peaceable possession of the said premises at the expiration of said term.

In witness whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

.....(Seal.)

.....(Seal.)

(Acknowledgment in usual form.)

Section 123.—ASSIGNMENT OF LEASE.—The lessee may make an assignment of the lease, with the written consent of the lessor; or, if the lease contains no provision against assignment without consent, then the lessee may make an assignment of the lease without the consent of the lessor.

Section 124.—FORM OF ASSIGNMENT OF LEASE.—The following is a form of assignment of lease:

KNOW ALL MEN BY THESE PRESENTS: That I, ....., of the County of ....., State of California, for and in consideration of the sum of ..... Dollars, Gold Coin of the United States, to me in hand paid by ....., of the same place, do by these presents sell, convey, assign, transfer, and set over unto the said ....., a certain indenture of lease bearing date the ..... day of ....., 19 ....., made by ....., of the County of ....., State of California, to me, of a certain lot, piece, or parcel of land situate in the County of ....., State of California, and particularly described as follows, to-wit: .....

(Here describe property.)

..... for the term of ..... years, reserving unto the said ..... the rent of ..... Dollars, payable in ..... (monthly or yearly) payment of ..... Dollars on the ..... day of ..... in each and every (month or year) ..... during said term, with all and singular the premises therein mentioned and described.

and the buildings thereon, together with the appurtenances.

To have and to hold the same unto the said....., his heirs, executors, and administrators, from the.....day of....., 19....., for and during all the remainder yet to come of the said term of.....years, mentioned in said indenture of lease. And I do hereby covenant and agree to and with the said....., that the said assigned premises now are free and clear of and from all former and other gifts, grants, bargains, sales, leases, judgments, executions, back rents, taxes, assessments, and incumbrances, by me suffered, made, or created.

In witness whereof, I have hereunto set my hand and seal the day and year first above written.

.....(Seal.)

.....(Seal.)

(Acknowledgment in usual form.)

Section 125.—WHAT REPAIRS LESSOR MUST MAKE.—The lessor of a building intended for the occupation of human beings must, unless there is an agreement to the contrary, put the building into a condition fit for occupation, and keep it in tenantable repair during the term of the lease. If the building gets out of repair by the fault of the tenant, or in a dangerous condition by reason of the tenant's lack of ordinary care, the lessor is not bound to make such repairs, but the tenant himself will be liable to make them.

Civil Code, Sections 1941, 1949.

Section 126.—WHEN LESSEE MAY MAKE REPAIRS.—When dilapidations have been occasioned to a dwelling which the landlord ought to repair, but neglects to do so, the tenant may make the repairs himself, provided the cost of such repairs is not more than one month's rent of the premises; and the tenant may deduct the cost of such repairs as he is compelled to make from the rent. But, before he can legally make the repairs himself, so



as to deduct the cost from the rent, he must give reasonable notice to the lessor, stating the character of the dilapidations and the repairs needed, and that the lessee intends to make the repairs if the lessor does not. This notice may be given verbally or in writing. If after such notice the lessor refuses or neglects to make the repairs, the lessee may vacate the premises, in which case he will be discharged from further payment of rent, or the performance of the other conditions of the lease. The law gives the tenant the privilege of vacating the premises in case the landlord neglects to make the repairs needed, and also authorizes him, if he prefers, to remain and make the repairs himself, when they do not require an expenditure exceeding one month's rent. The law relates only to buildings intended to be occupied by human beings, and the Supreme Court of this State has intimated in several decisions that the tenant of business property has no right to make repairs himself at the expense of the landlord, and that the lessor of business property is not required by the law to keep the building in repair at all. So far as business property is concerned, that is, buildings not intended for human habitation, for residence, the law leaves the matter of repairs to be determined solely by the terms of the agreements in the lease.

#### Civil Code, Section 1942.

Section 127.—TERMINATION OF LEASE.—A lease is terminated by the expiration of the term, or by the happening of some event which works a forfeiture of the lease, or by consent of the parties. A lease is terminated, as a matter of course, at the end of the term. So, too, it is, of course, within the power of the parties to agree, before the end of the term, for the termination of the lease at any time. The lease may provide that, if any condition of the lease be broken, as for non-payment of the stipulated rent at the time agreed upon, or for breach of a covenant not to assign the lease without the consent



of the lessor, the lease shall be terminated, and a breach of the condition will terminate the lease.

Section 128.—RENEWAL OF LEASE.—A lease may provide by its terms for its renewal, and the lessee will have the right to a renewal of the lease according to the agreement. But if the lease gives the privilege of renewal for a further term, the lessee must, before the expiration of the original term, give the lessor notice that he elects to renew the lease; and if he does not give such notice, his right to insist upon the privilege of renewal is lost. If a lessee of real property remains in possession after the expiration of the term, and the lessor accepts rent from him, the law presumes that the parties have renewed the contract on the same terms and for the same time, but not exceeding one month, when the rent is payable monthly, nor in any case exceeding one year. In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than sixty days after the expiration of the term without any demand for possession or notice to quit by the landlord, he will be deemed to be holding by permission of the landlord and will be entitled to hold the land under the terms of the lease for another full year.

Civil Code, Section 1945.

Section 129.—FORM OF NOTICE OF INTENTION TO RENEW LEASE.—Following is a form of notice by tenant of his intention to renew the lease. It is not required to be acknowledged, or recorded, even though the original may be both acknowledged and recorded. The notice may be served on the landlord either personally or by mail. It must be served on the landlord at any time before the expiration of the original lease:

San Francisco, California, ....., 19.....

John Smith:—Dear Sir:

You are hereby notified that I elect and intend to renew the lease dated....., 19.....,

executed and delivered by you to me, for the property situated at....., State of California, in accordance with the terms stated in said original lease with reference to a renewal thereof.

.....  
Tenant.

Section 130.—TERM OF HIRING WHEN NO LIMIT IS FIXED.—By the statute of California it is provided, that a hiring of real property, other than lodgings and dwelling-houses, in places where there is no custom on the subject, is presumed to be for one year from its commencement, when no limit is fixed to the term by the agreement between the parties. The hiring of lodgings or a dwelling-house for an unspecified term is presumed to have been made for such length of time as the parties adopt for the estimation of the rent. Thus, a hiring at a monthly rate of rent is presumed to be for one month. If there is no agreement respecting either the length of time or the rent, the hiring is presumed to be monthly.

Civil Code, Sections 1943, 1944.

Section 131.—WHEN RENT IS PAYABLE.—The law provides, that when there is no usage or contract to the contrary, rents are payable at the termination of the holding, when it does not exceed one year. If the holding is by the day, week, month, quarter, or year, rent is payable at the termination of the respective periods, as it successively becomes due.

Civil Code, Section 1947.

Section 132.—NOTICE TO QUIT.—When the term of hiring of real property is not specified by the parties, to terminate the hiring, one of the parties must give notice to the other of his intention to end the hiring. The tenancy may be terminated by the landlord giving notice to the tenant, in writing, to remove from the premises. The notice must specify the time within which the tenant must remove from the premises, and must give him a period of not less than thirty days. After this notice has

been served, and the period specified in the notice has expired, the landlord may proceed to recover possession, either by re-entering and taking possession or by a suit in court. Three days' notice only is required to be served on a tenant under a lease for a stated term. If such tenant fails to pay the rent agreed upon, the landlord, at any time within one year after the rent becomes due, may give three days' notice, in writing, requiring the payment of the rent within that time; and this notice must also be served on any subtenant who may be in possession of any portion of the premises. If the tenant has broken some other condition of the lease, the same written notice must be served on him, and on subtenants, if there be any, requiring him to perform the conditions of the lease or surrender the possession of the property. The lease will be saved from forfeiture if the rent is paid or other condition of the lease performed within three days after service of the notice. If the rent is not paid or condition performed within three days after service of the notice, the landlord may recover possession of the property in a suit for unlawful detainer.

Civil Code, Sections 789, 1946; Code of Civil Procedure, Section 1161.

Section 133.—**RAISING THE RENT.**—In all leases of lands or tenements, or of any interest therein, from month to month, the landlord may, upon giving notice in writing at least thirty days before the expiration of the month, change the terms of the lease to take effect at the expiration of the month. The notice, when served upon the tenant, shall of itself operate and be effectual to create and establish, as a part of the lease, the terms, rent, and conditions specified in the notice, if the tenant shall continue to hold the premises after the expiration of the month. This law applies only to tenants from month to month.

Act of the Legislature, in effect February 26, 1907.

**Section 134.—NOTICE TO QUIT—HOW NOTICE MUST BE SERVED.**—The notice to quit must be served either by delivering a copy to the tenant personally; or, if he is absent from his place of business or residence, by leaving a copy of the notice at either place with some person of suitable age and discretion, and sending a copy through the mail, addressed to the tenant at his place of residence; or if his place of business or residence cannot be ascertained, or if no person of suitable age and discretion can be found at either place, the notice may be served by posting a copy in a conspicuous place on the premises, and delivering a copy to any person found residing there, and also sending a copy through the mail addressed to the tenant at the place where the property is situated.

Code of Civil Procedure, Section 1162.

**Section 135.—FORM OF NOTICE TO QUIT.**—A notice to quit need not be in any particular form to be valid. It is sufficient, in any form, if it shows on its face that possession is demanded, and that the time fixed by the statute is given. The following is a form of notice to quit, to be served where the tenancy is for no definite term:

\_\_\_\_\_, State of  
California, \_\_\_\_\_, 19\_\_\_\_\_.

To \_\_\_\_\_,

Take notice that you are hereby required to quit and deliver up to me the possession of the premises now held and occupied by you, known as \_\_\_\_\_

\_\_\_\_\_  
(Here describe the premises.)

\_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

This is intended as a thirty days' notice to quit, for the purpose of terminating your tenancy.

\_\_\_\_\_  
Landlord.



Section 136.—FORM OF NOTICE TO PAY RENT OR SURRENDER POSSESSION.—The following is a form of three days' notice to pay rent or surrender possession:

\_\_\_\_\_, State of California,  
\_\_\_\_\_, 19\_\_\_\_\_.

To \_\_\_\_\_,

You are hereby required to pay the rent of the premises hereinafter described, and which you now hold possession of, amounting to the sum of \_\_\_\_\_

Dollars, being the amount now due and owing to me by you, within three days after service of this notice as required by law, or deliver up to me the possession of the said premises.

Said premises are situated at \_\_\_\_\_

\_\_\_\_\_, and described as follows, to-wit:

(Here describe property.)

\_\_\_\_\_  
Landlord.

Section 137.—OPTION TO PURCHASE IN LEASE.—The lessor may provide in the lease that the lessee shall have the right to purchase the leased premises at some time within the term. If the lessee concludes to take advantage of the option given him, he must so notify the lessor, and tender the purchase price agreed upon in the lease. If he notifies the lessor that he will take the property, as provided for in the lease, and tenders the purchase price, the lessee will have the right to a deed, and the lessor can be compelled to execute his deed to the property.

Section 138.—FORM OF LEASE OF PERSONAL PROPERTY. The following is a form of lease of personal property:

THIS INDENTURE, made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, between \_\_\_\_\_, of the County of \_\_\_\_\_, State of California, the party of the first part, and \_\_\_\_\_, of the same place, witnesseth:

That in consideration of the rents, covenants and agreements to be paid and performed on the part of the said party of the second part, the said party of the first part does hereby lease to the party of the second part all those certain goods and chattels, situate at....., and particularly described as follows, to-wit:

.....  
(Here give a particular description of each article of personal property.)  
.....

To have and to hold the same to the said lessee, for the term of.....years, beginning....., 19....., and ending....., 19....., the said lessee paying therefor the yearly rent of.....Dollars during the said term.

And the said lessee covenants and agrees with the said lessor that he will pay the rent aforesaid, in monthly payments of.....Dollars each, on the first day of each and every month during said term; and that he will not assign nor underlet this lease or the said goods and chattels, nor any part thereof, without the written consent of said lessor; and that he will, at his own expense, replace any and all of said goods and chattels which shall be lost, or carelessly or accidentally injured, during the said term; and at the expiration of said term, or sooner termination of this lease, he will restore the said goods and chattels to the said lessor, in the like good order in which they now are, wear and diminution resulting from reasonable use and unavoidable casualties excepted. And it is agreed that, until the expiration of said term, or until condition broken, said party of the second part shall peaceably retain possession of said goods and chattels, but in case any one or more of the conditions of this lease are broken by the said party of the second part, the party of the first part may at any time, day or night, enter the place where said

goods and chattels, or any part thereof, may be, and remove the same, and he may use all necessary force to remove the property herein described.

And it is further agreed that time is of the essence of this contract.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

.....(Seal.)

.....(Seal.)

Section 139.—TENANT MUST DELIVER NOTICE SERVED ON HIM.—Every tenant who receives notice of any proceeding to recover the real property occupied by him, or its possession, must inform his landlord immediately, and must also deliver to his landlord the notice he received, if in writing; and if the tenant fails to inform his landlord of any such notice, or to deliver the notice to him, if in writing, he will be liable to the landlord for all damages which he may sustain by reason of his failure.

Civil Code, Section 1949.

Section 140.—FORM OF FARMING LEASE ON SHARES.—The following is a form of farming lease on shares:

THIS INDENTURE, made the.....day of  
....., 19....., between.....  
.....of the County of.....  
State of California, the party of the first part, and  
....., of the same place, the party of  
the second part, witnesseth:

That the said party of the first part, for and in consideration of the rents, covenants, and agreements hereinafter mentioned, reserved and contained on the part of the said party of the second part, his executors or administrators, to be paid, kept, and performed, has granted, demised, and to farm let, unto the said party of the second part, his executors or administrators, all those

certain lots, pieces or parcels of land situate, lying and being in the County of..... State of California, and particularly described as follows, to-wit:

(Here describe the land.)

To have and to hold the said demised premises, unto the party of the second part, his heirs, executors, or administrators, for his and their sole and proper use and benefit, for and during the term of..... years, beginning....., 19....., and ending....., 19....., together with all the tenements and hereditaments thereunto appertaining, and all the stock and farming utensils, of every name and nature, now being in or upon the same, belonging to the said party of the first part.

In consideration whereof, the said party of the second part hereby covenants and agrees to and with the said party of the first part, that he will occupy, till and in all respects cultivate the premises above mentioned, during the term aforesaid, in a farmerlike manner, and according to the usual course of farming practiced in the neighborhood; that he will not commit any waste or damage, or suffer any to be done; that he will, at his own cost and expense, keep the fences and the buildings on the said premises in good repair, reasonable wear thereof and damages by the elements excepted; and that he will deliver to the said party of the first part, his heirs, executors, or administrators, or to his or their order, each year during the term of this lease, one equal (here insert share agreed on) of all the proceeds and crops produced on the said farm and premises aforesaid, of every name, kind and description, to be divided on the said premises, in stack and sack, according to the usual course and custom of making such divisions in the neighborhood, and in a seasonable time after such crop or crops shall have been gathered and harvested.

It is further understood and agreed between the aforesaid parties, that the party of the second part shall find all seed or seeds necessary to be sown on said premises; that the party of the second part is to do, or cause to be done, all necessary work and labor in and about the



cultivation of the said premises; that he is to have full permission to inclose, pasture, or till and cultivate, the said premises, so far as the same may be done without injury to the reversion, and to cut all necessary timber for firewood, farming purposes and repairing fences; and that he is to give up and yield peaceable possession of the said premises at the expiration of said term. Said first party shall furnish on said premises, at the proper time in each year during the term of this lease, sacks sufficient to hold all the grain coming to said first party.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

.....(Seal.)

.....(Seal.)

(Acknowledgment in usual form.)

Section 141.—**FIXTURES ON LEASED PREMISES.**—If the tenant puts in fixtures on the premises—as by building partition walls, elevators, or shelving, counters, etc., attached and built into or upon the walls or other parts of the building so as to form fixtures therein—he cannot remove such fixtures without the consent of the landlord, unless the lease itself contains a clause giving him that right.

If a lease expires, which contains a clause allowing the tenant to remove the fixtures, and a new lease is then made which leaves out that clause, the tenant loses the right to take the fixtures away; and, upon the expiration of the second lease, the fixtures must be left in the building and be the property of the landlord.

Section 142.—**DESTRUCTION OF PREMISES BY FIRE.**—In this state, the hiring of a thing ends by the destruction of the thing hired. Therefore, if a store, dwelling, or factory is leased, and is destroyed by fire, so as to be no longer fit for use, the lease is terminated and the lessee released from future payment of rent. But a lessee, who has taken possession of leased premises for a term of years and paid a part of his rent in advance, cannot, in

Page 199, 10th Edition, Business Law for Business Men—Anti-Japanese Law—California's New Anti-Alien Land Law, an initiative Act approved at the General election in November, 1920, went into effect December 9, 1920.

The law repeals the previous three-year land leasing privilege, so far as it applied to aliens ineligible to citizenship leasing land for agricultural purposes. The law also provides specifically that no alien ineligible to citizenship, nor any organization controlled by such aliens, may act as guardian of a minor who, because of birth in this country, may legally acquire agricultural land.

The law also provides, that any alien ineligible to citizenship may acquire, use, transmit and inherit real property only as prescribed by treaty, and not otherwise.

"Hereafter all aliens, other than those specified in section one hereof (those eligible to citizenship), may become members of or acquire shares of stock in any company, association or corporation that is or may be authorized to acquire, possess, enjoy or convey agricultural land, in the manner and to the extent and for the purpose prescribed by any treaty now existing between the government of the United States and the nation or country of which such alien is a citizen or subject, and not otherwise.

"Hereafter no alien mentioned in section two hereof (ineligible to citizenship) and no company, association, or company mentioned in section three hereof (controlled by ineligible aliens) may be appointed guardian of that portion of the estate of a minor which consists of property which such alien or such company, association or corporation is inhibited from acquiring, possessing or transferring by reason of the provisions of this act. The public administrator of the proper county, or any other competent person or corporation, may be appointed guardian of the estate of a minor citizen whose parents are ineligible to appointment under the provisions of this act. Such administrators as may be appointed under the provisions just quoted will be required, according to the new law, to make detailed reports on the estate they are administering to the Secretary of State."

"Violation of the provisions of the law referring to guardianship is made a misdemeanor and shall be punished by a fine not exceeding \$1000 or by imprisonment in the County Jail not exceeding one year, or by both such fine and imprisonment."

Conspiracy to effect a transfer of real property in violation of the provisions of the law is made punishable by imprisonment in the County Jail or State penitentiary not exceeding two years, or by a fine not exceeding \$5000 or both.

—Initiative Act adopted by the people of California at the General Election in November, 1920; in effect December 9, 1920.



the absence of any covenant in the lease, recover the rent so paid, in case of the total destruction of the premises by fire without any fault of either party to the lease. (Decided by the Supreme Court of California, in the case of *Harvey vs. Weisbaum*, which decision is printed in Vol. 10, California Decisions, page 177.)

Section 143.—**REPUDIATION OF LEASE — LANDLORD'S REMEDY.**—The abandonment of leased premises, and a declaration of intention by the lessee not to pay any more rent, does not change the relation of lessor and lessee, nor discharge the latter from the obligation to pay rent, although the lessor may relet the premises for the benefit of the lessee. Where a lease is repudiated and the premises abandoned, the landlord may rest upon his contract and sue his tenant as each installment of rent, or the whole thereof, becomes due, or he may take possession of the premises and recover damages, which damages is the difference between what he may be able to rent the premises for and the price agreed to be paid under the lease. Where the landlord sues for damages he cannot recover in advance the full price to be paid for the unexpired term, but is limited in his recovery as above stated. (Decided by the Supreme Court of California, in the case of *Bradbury vs. Higginson*, which decision is printed in Vol. 42, California Decisions, page 284.)

## DEEDS

Section 144.—**TRANSFER BY DEED.**—The title to real property is transferred from one to another by an instrument in writing called a deed. A deed must be signed by the vendor, and acknowledged by him before a notary, or other officer having authority to take acknowledgments, and must be recorded in the office of the County Recorder of the county where the land is situated.

Section 145.—**WHO MAY TAKE ACKNOWLEDGMENTS OF DEEDS.**—The acknowledgment of a deed may be made in



this state, within the city, county, city and county, township or district for which the officer was elected, or appointed, before either:

Clerk of a court of record;

County recorder;

Court commissioner;

Notary public;

Justice of the peace.

Act of the Legislature, approved March 21, 1911.

Section 146.—DEED TO COMMUNITY PROPERTY.—Property acquired by husband and wife, during their marriage, by their joint efforts, is community property. All property acquired during marriage is community property, except property owned by either before marriage, or property acquired by either after marriage by gift, will, or as heir of a deceased person.

The husband has the management and control of the community personal property, with like absolute power of disposition, other than testamentary, as he has of his separate estate; *provided, however*, that he can not make a gift of such community personal property, or dispose of the same without a valuable consideration, or sell, convey, or encumber the furniture, furnishings, or fittings of the home, or the clothing or wearing apparel of the wife or minor children that is community, without the written consent of the wife.

The husband has the management and control of the community real property, but the wife must join with him in executing any instrument by which such community real property or any interest therein is leased for a longer period than one year, or is sold, conveyed, or encumbered; *provided, however*, that the sole lease, contract, mortgage or deed of the husband, holding the record title to community real property, to a lessee, purchaser or encumbrancer, in good faith without knowledge of the marriage relation shall be presumed to be valid; but no action to avoid such instrument shall be

commenced after the expiration of one year from the filing for record of such instrument in the recorder's office in the county in which the land is situate.

Act of the Legislature, approved May 23, 1917;  
in effect July 27, 1917.

Section 147.—DEED TO SEPARATE PROPERTY.—Either husband or wife has the right to deed his or her separate property, without the consent of the other, and without the signature of the other to the deed.

Section 148.—DEED OF GIFT.—A property consideration is not necessary to a valid deed in California. A deed of gift, for love and affection, may be made by one person to another of real property, and the deed will be for a consideration which the law recognizes as sufficient and will sustain.

Section 149.—FORM OF DEED OF GIFT.—The following is a form of deed of gift, for use in the State of California:

THIS INDENTURE, made the.....day of.....  
....., 19....., between.....  
....., of the County of....., State  
of California, the party of the first part, and.....  
....., of the same place, the party of the  
second part, witnesseth:—

That the said party of the first part, for and in consideration of the love and affection which the said party of the first part has and bears unto the said party of the second part, as also for the better maintenance, support, protection, and livelihood of the said party of the second part, does by these presents give, grant, alien, and confirm unto the said party of the second part, and to.....  
heirs and assigns forever, all those certain lots, pieces, or parcels of land situate, lying, and being in the County of....., State of California,

bounded and particularly described as follows, to-wit:.....

(Here describe property.)

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

To have and to hold, all and singular the said premises, together with the appurtenances, unto the said party of the second part,..... heirs and assigns forever.

In witness whereof, the said party of the first part has hereunto set..... hand and seal the day and year first above written.

(Seal.)

STATE OF CALIFORNIA, }  
COUNTY OF..... } ss.

On this..... day of....., A. D. one thousand nine hundred and....., before me, ....., a Notary Public in and for said..... County and State, residing therein, duly commissioned and sworn, personally appeared ....., known to me to be the person..... whose name....., ..... subscribed to and who executed the within instrument, and..... acknowledged to me that..... executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the..... County of....., the day and year in this certificate first above written.

Notary Public in and for the.....  
County of....., State of  
California.

Commission expires.....19.....

Section 150.—BARGAIN AND SALE DEED.—The most common form of transfer of real estate is by bargain and sale deed. In such a deed, the true consideration need not be stated. If the consideration, for instance, is \$500, it may be stated in the deed at \$1.00, or any other sum. The law presumes that an adequate consideration was given, and if that should become a disputed question, the law allows proof to be made as to what the consideration really was.

Section 151.—FORM OF BARGAIN AND SALE DEED.—The following is a form of bargain and sale deed:

THIS INDENTURE, made the.....day of.....  
....., 19....., between.....  
....., of the County of....., State  
of California, the party of the first part, and.....  
....., of the same place, the party  
of the second part, witnesseth:—

That the said party of the first part, for and in consideration of the sum of.....Dollars, Gold Coin of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, and convey unto the said party of the second part, and to his heirs, and assigns, forever, all those certain lots, pieces, or parcels of land situate, lying and being in the County of....., State of California, and bounded and particularly described as follows, to-wit: .....

(Here describe the land.)

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

To have and to hold, all and singular the said premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.



In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

..... (Seal.)

STATE OF CALIFORNIA, {  
COUNTY OF..... } ss.

On this..... day of....., A. D. one thousand nine hundred and....., before me....., a Notary Public in and for said..... County and State, residing therein, duly commissioned and sworn, personally appeared....., known to me to be the person..... whose name..... subscribed to, and who executed the within instrument and..... acknowledged to me that..... executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the..... County of..... the day and year in this certificate first above written.

.....  
Notary Public in and for the..... County  
of....., State of California.  
Commission expires..... 19.....

Section 152.—QUITCLAIM DEED.—It may occur that the grantor has some interest in real estate, which he wishes to transfer, yet the interest is not so exactly ascertained as to be capable of definite description. In this event, it is usual to make a quitclaim deed, the grantor transferring all his right, title, or claim in or to the land, and relinquishing all his claim or right, whatever it may be, to his grantee.

Section 153.—FORM OF QUITCLAIM DEED.—The following is a form of quitclaim deed:

THIS INDENTURE, made the..... day of..... 19....., between..... of the County of....., State of California, the party of the

first part, and....., of the same place, the party of the second part, witnesseth:—

That the said party of the first part, for and in consideration of the sum of.....Dollars, Gold Coin of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has remised, released, and forever quitclaimed, and by these presents does remise, release, and forever quitclaim, unto the said party of the second part, and to.....heirs and assigns, all those certain lots, pieces, or parcels of land, situate, lying, and being in the County of....., State of California, and bounded and particularly described as follows, to-wit:.....

(Here describe land.)

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

To have and to hold, all and singular the said premises, together with the appurtenances, unto the said party of the second part, .....heirs and assigns forever.

In witness whereof, the said party of the first part has hereunto set.....hand and seal the day and year first above written.

.....(Seal.)

STATE OF CALIFORNIA, }  
COUNTY OF.....} ss.

On this.....day of....., A. D. one thousand nine hundred and....., before me, .....a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared....., known to me to be the person..... whose name..... subscribed to and who executed the within instrument, and..... acknowledged to me that.....executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the County of....., the day and year in this certificate first above written.

.....  
Notary Public in and for the County of.....,  
State of California.

Commission expires....., 19......

Section 154.—WARRANTY DEED.—The purchaser of real estate may insist upon an agreement on the part of the seller to defend the title, to secure him in the possession, in the event of his possession being invaded or questioned by a third person after the sale. The parties to a sale of land may lawfully make an agreement whereby the seller will be bound to defend the title and possession in the purchaser. This agreement is evidenced by a warranty deed, conveying the property, and at the same time binding the seller to stand ready to defend the right of possession in the purchaser, should it be attacked.

Section 155.—FORM OF WARRANTY DEED.—The following is a form of warranty deed:

THIS INDENTURE, made the.....day of....., 19....., between....., of the County of....., State of California, the party of the first part, and..... of the same place, the party of the second part, witnesseth:—

That the said party of the first part, for and in consideration of the sum of....., Dollars, Gold Coin of the United States of America, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, and convey unto the said party of the second part, and to.....heirs and assigns forever, all those certain lots, pieces, or parcels of land, situate, lying, and being in the County of....., State of

California, and bounded and particularly described as follows, to-wit: .....

(Here describe land.)

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

To have and to hold, all and singular, the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, and to ..... heirs and assigns forever.

And the said party of the first part, and ..... heirs, the said premises, in the quiet and peaceable possession of the said party of the second part, ..... heirs, and assigns, against the said party of the first part, and his heirs, and against all and every person or persons whomsoever lawfully claiming or to claim the same, shall and will warrant, and by these presents forever defend.

In witness whereof the said party of the first part has hereunto set ..... hand and seal the day and year first above written.

..... (Seal.)

STATE OF CALIFORNIA, }  
COUNTY OF ..... } ss.

On this ..... day of ....., A. D. one thousand nine hundred and ....., before me, .....  
....., a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared .....  
....., known to me to be the person .....  
whose name ..... subscribed to, and who executed the within instrument, and ..... acknowledged to me that ..... executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the County



of....., the day and year in this certificate first above written.

Notary Public in and for the County of.....  
State of California.

Commission expires....., 19.....

Section 156.—CORPORATION DEED.—A deed may be made by a corporation, but the deed must be authorized by a resolution of the Board of Directors. When the Board of Directors of a corporation has passed a resolution directing the execution of a deed, the President may sign, execute, and deliver the deed for the corporation.

Section 157.—FORM OF CORPORATION DEED AND ACKNOWLEDGMENT.—The following is a form of corporation deed, and the acknowledgment thereto. The acknowledgment is different from the acknowledgment to the deed of an individual, in that it must show the official capacity of the person executing it:

THIS INDENTURE, made the.....day of  
....., 19....., between.....,  
a corporation duly authorized under the laws of the State of California, whose principal place of business is at  
....., in the County of.....  
State of California, party of the first part, and.....  
.....of the same place, party of the second part,  
Witnesseth:

That, whereas, the said party of the first part is a corporation duly incorporated and existing under and by virtue of the laws of the State of California; and, whereas, in pursuance of the statutes in such cases made and provided, it has acquired and is the owner of the land and premises hereinafter described; and whereas, the Board of Directors of said corporation, duly assembled, on the  
.....day of....., duly passed the following resolutions, to-wit:.....

(Here insert in full the resolution adopted by the Board of Directors authorizing the sale of the land.)

.....

.....

.....

Now, therefore, in pursuance of said resolution aforesaid, and in consideration of the sum of.....

.....Dollars, gold coin of the United States of America, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, the said party of the first part does by these presents grant, bargain, sell, and convey unto the said party of the second part, and to his heirs and assigns forever, all those certain lots, pieces, or parcels of land situate, lying, and being in the County of....., State of California, and bounded and particularly described as follows, to-wit:.....

.....

(Here describe the land.)

.....

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

To have and to hold, all and singular, the said premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first part, by resolution of its Board of Directors, has caused these presents to be subscribed by its President, and its corporate name and seal to be hereunto affixed, the day and year first above written.

.....(Seal.)  
By....., President.

STATE OF CALIFORNIA, }  
COUNTY OF..... } ss.

On this .....day of....., in the year 19....., before me, ....., a Notary Public in and for

the said County and State, residing therein, duly commissioned and sworn, personally appeared.....

.....known to me to be the President of the corporation described in and that executed the within instrument, and also known to me to be the person who executed it on behalf of the corporation therein named, and he acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the County of....., the day and year in this certificate first above written.

.....  
Notary Public in and for the County of....., State of California.  
Commission expires....., 19.....

Section 158—DEED IN ESCROW—A deed may be deposited by the grantor with a third person, to be delivered to the grantee on performance of a condition, to take effect when the condition is performed. Thus, a deed deposited with a bank, to be delivered to the grantee upon the payment of so much money, or a deed placed in the hands of a third party, to be delivered to the grantee upon the death of the grantor, will take effect when the money is paid, or when the death of the grantor occurs. While in the possession of the third person, and subject to the condition, the deed is called an escrow.

Civil Code, Section 1057.

Section 159—EFFECT OF DEED IN ESCROW—It often occurs that a person will make a deed in escrow, without sufficient knowledge of the effect of his act, and when, if he knew the law, the deed would not have been made. Many people suppose that a deed can be made, and placed in the hands of a third person, to be delivered upon the death of the maker, and still be taken out of escrow at any time. But this is not the law. On the contrary, it is the

law of California, that when the owner of land makes a deed, and delivers it to another, with instructions only to hold without recording until his death, and then to deliver it to the grantee, the grantor cannot recall the deed, nor alter its provisions, and he has no interest in the land left, except a life estate. His deed passes the title to the land at once to the grantee, qualified only by the right of the grantor to use and occupy the property, or take and receive the rents and profits, during his life. The person with whom such a deed is left in escrow has no right to give it back to the grantor, if the latter should change his mind about it. The act of the grantor, in making such a deed, delivered to a third person in escrow, is irrevocable by him, no matter how much he would like to take it back, or how deeply he may regret his act. (Decided by the Supreme Court of California, in the case of *Bury vs. Young*, which decision is printed in Volume 98 of the California Reports, page 446.)

Section 160—DEED CANNOT BE CANCELED.—If a deed is made, executed, and acknowledged, and delivered, but not recorded, the property cannot be transferred back by a redelivery of the deed, or by its cancellation. The grantee in such a case must make a deed back to the grantor, and both deeds must then be recorded.

Civil Code, Section 1058.

Section 161—POWER OF ATTORNEY TO MAKE DEED.—The owner of real estate may authorize another person to sell, and to make and execute a deed conveying his land, for and on his behalf. This authority he may delegate to another by means of a power of attorney. The power of attorney must be executed and acknowledged in the same manner as a deed.

For a form of power of attorney authorizing an agent to sell and convey real property, see the subject, "Power of Attorney."



**Section 162—DEED TO COMMUNITY PROPERTY WHERE HUSBAND OR WIFE IS INSANE.**—Where real property is held as community property, and either the husband or wife has been adjudged insane, the husband or wife not insane may petition the superior court of the county in which such community real property is situated for an order permitting the husband or wife, not insane, to sell and convey, mortgage or lease, such community real property to raise moneys to provide for the support and care either of the sane or insane spouse, or of their minor children, and also to raise moneys for the payment of the necessary taxes, interest and other charges incurred and required to be paid for the protection and preservation of the community estate. Such petition must be subscribed and sworn to by the applicant, setting forth the name and age of the insane husband or wife; a description of the premises constituting the community real property petitioned to be sold, mortgaged, or leased; the value of same; the county in which it is situated; and such facts, in addition to the insanity of the husband or wife, relating to the circumstances and necessities of the applicant and his or her family as he or she may rely upon in support of the petition.

Notice of the application for such order must be given by publication of the same, in a newspaper published in the county in which such community real property is situated, if there is a newspaper published therein, once each week for three successive weeks, prior to the hearing of such application, and a copy of such notice must also be personally served upon the nearest relative of such insane husband or wife, resident in this state, at least three weeks prior to such application; and in case there is no such relative known to the applicant, a copy of such notice must be so served upon the public administrator of the county in which such community real property is situated; and in such case it is the duty of such public administrator to appear and represent the interests of such insane person. For all such services rendered by the pub

Section 162, page 212, "Business Law for Business Men"—INSANE OR INCOMPETENT HUSBAND OR WIFE—Wherever the word "insane" appears in Section 162 add the words "or incompetent." The law now applies to community property where the husband or wife is either insane or incompetent. Act of the Legislature of California, approved May 12, 1921; in effect July 12, 1921.



lic administrator he must be allowed a reasonable fee, to be fixed by the court, and the same must be taxed as costs against the person making application for the order herein provided for.

If it appears to the court that such husband or wife has been adjudged insane, the court may make an order permitting the husband or wife, not insane, to sell and convey, or mortgage or lease such community real property, and thereafter any sale, conveyance, mortgage or lease, made in pursuance of such order is as valid and effectual as if the property affected thereby was the absolute property of the person making such sale, conveyance, mortgage or lease. If a sale is ordered it must be reported to and confirmed by the court.

Act of the Legislature, approved May 27, 1919;  
in effect July 27, 1919.

Section 163—DEFECTIVELY ACKNOWLEDGED DEED.—Any instrument affecting the title to real property, including any instrument executed by a married woman on or after the first day of July, 1891, which was, previous to the first day of January, 1919, copied into the proper book of record, kept in the office of any county recorder, imparts, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, or informality in the execution of the instrument, or in the certificate of acknowledgement thereof, or the absence of any such certificate; but nothing herein affects the rights of purchasers or encumbrancers previous to the taking effect of this act. Duly certified copies of the record of any such instrument may be read in evidence with like effect as copies of an instrument duly acknowledged and recorded; *provided*, when such copying in the proper book of record occurred within fifteen years prior to the trial of the action, it is shown first that the original instrument was genuine.

Act of the Legislature, approved May 5, 1919;  
in effect July 22, 1919.



Section 164—MAPS OF SUBDIVISIONS.—Whenever any tract or subdivision of land shall be laid out into lots for the purpose of sale, the owner or owners thereof shall cause to be made out and filed with the county recorder of the county in which the same is situated, an accurate map or plat thereof on cloth, drawn and attested to by a civil engineer or licensed surveyor from his own survey of the ground. Said engineer or surveyor shall, in making the surveys, leave sufficient permanent monuments so that another surveyor or engineer may retrace his work. The nature and location of these monuments shall be plainly shown on the map. The map shall also particularly set forth and describe:

*First*—All parcels of ground within such tract or subdivision used for public purposes or offered for dedication for public uses, whether they be intended for public highways, parks, courts, commons or other public uses, and their dimensions and boundaries and the courses of their boundary lines.

*Second*—All lots intended for sale, or reserved for private purposes and not offered for dedication to the public use, either by number or letter, and their dimensions and boundaries and the courses of their boundary lines. All parcels of land offered for dedication as public highways and not accepted by the proper authorities upon presentation to them, shall also be designated by number or letter.

*Third*—The exact location of such tract or subdivision of land into lots with reference to adjacent subdivisions of land into lots, the maps or plats of which have been previously recorded, if any, or if none, then with reference to corners of a United States survey, or to some natural or artificial monument.

Every such map or plat shall be on cloth and clearly and legibly drawn in all its details upon tracing cloth of good quality. The size of the sheets of drawing cloth must be 18 by 26 inches or 13 by 18 inches. Marginal lines must be drawn around the entire sheet, leaving a

Section 164, page 214, "Business Law for Business Men"—EXCLUDING LANDS FROM SUB-DIVISIONS—Upon the application of the owners of at least two-thirds of the area of land included within the boundaries of any tract or subdivision of land described in a recorded map or plat, or of that portion thereof sought to be excluded, where application is made to vacate a portion of any subdivision or tract, the superior court of the county or city and county wherein such land is situated, may cause all or any portion of such land to be excluded from the subdivision or tract and the recorded map or plat thereof to be altered or vacated.

Act of the Legislature of California, approved May 23, 1921; in effect, July 23, 1921.



margin of one inch from the edges of the sheets, and the name, title, or other designation, and all drawings, affidavits, certificates, acknowledgments, indorsements, acceptances of dedication, and notarial seals must be within said marginal lines. The scale to which the drawing is made must be large enough to show the details clearly, and two or more sheets must be used if one does not give sufficient room to accomplish this end. If more than one sheet is used, each sheet must be numbered, connections of one sheet to another clearly given and the number of the sheets used in the subdivision must be given in the affidavit.

Upon every map or plat there shall be indorsed a consent to the making thereof, signed by the owner or owners of the tract or other subdivision of land shown thereon, and also by all other persons whose consent is necessary to pass a clear title to such land, and acknowledged by all the signers in the same manner as conveyances of real property; also a certificate from the county auditor, and from the auditor or other proper officer of any municipal corporation, in which any part of such tract or other subdivision is situated, showing that there are no liens for unpaid state, county, municipal or other taxes, except taxes not yet payable, against said tract or subdivision of land or any part thereof; also a certificate of the clerk of the board of supervisors that a bond has been filed with said board as provided herein; and the owner or owners of any tract, or other subdivision of land shown thereon, shall execute and file with the board of supervisors of the county wherein such tract, or subdivision, or any part thereof, is situated, a good and sufficient bond to be approved by and in an amount to be fixed by said board of supervisors and by its terms made to inure to the benefit of the county wherein such tract, subdivision, or any part thereof, is situate, and conditioned for the payment of all taxes which are at the time of filing thereof, a lien against any such tract, or subdivision, or any part thereof, but not yet payable. Upon



every such map or plat which shows any parcels of land intended for public use and not previously dedicated therefor, there shall be indorsed a statement of the dedication of such parcels of ground intended for public use, executed by the owner or owners, and by all other persons whose consent is necessary to pass a clear title to such parcels of ground to the public, and acknowledged by all persons executing the same in the same manner as conveyances of real property.

The map or plat so made, indorsed and acknowledged shall be submitted to the governing body of the city, city and county, or county having control of public highways in the territory shown on such map or plat, for the approval of such governing body, before such map or plat is filed for record in the recorder's office. Such governing body, after examination duly made, shall approve or disapprove such map or plat within thirty days after the same is submitted to it as above provided. If approved, the governing body shall indorse, or cause to be indorsed, on said map or plat, its approval of the same. Without such approval the said map or plat shall not be filed for record or be recorded. Such governing body may require the public highways, if any, offered for dedication by said map or plat and the parcel or parcels of land, if any, therein reserved or indicated for highway or right of way purposes, and not offered for dedication to public use, to be as wide as and to conform, as near as practicable, to the adjoining, surrounding or neighboring streets or highways of said city, city and county, or county. If such map or plat offer for dedication any highways said governing body shall indorse thereon which of the highways so offered for dedication are accepted on behalf of the public, and thereupon such highways which have been so accepted, and no others, shall be and become dedicated to the public use.

No map or plat referred to in this act shall be accepted by the county recorder for filing or recording, unless the same shall in all respects comply with the provi-

sions of this act, and the recorder shall be entitled, before accepting or refusing such map or plat, to sufficient time to enable him to examine the same.

No person shall sell or offer for sale any lot or parcel of land, by reference to any map or plat, unless such map or plat has been made, certified, indorsed, acknowledged and filed in all respects as provided in this act, or was filed or recorded prior to the taking effect of this act and in accordance with the laws in force at the time it was so filed or recorded, and no person shall sell or offer for sale any lot or parcel of land by reference to any map or plat other than such recorded map or plat or true and correct copy thereof.

Every person who violates any of the provisions of this act is guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than twenty-five dollars and not more than five hundred dollars, or by imprisonment in the county jail for a period of not more than six months, or by both such fine and imprisonment, and the recordation of any map or plat which is not executed and approved as herein required shall be null and void; *provided, however*, that any owner or owners of any such tract or subdivision, who prior to the taking effect of this act caused to be prepared proper maps or plats thereof in conformity with the provisions of the act mentioned in section one hereof, and thereafter, through inadvertence or excusable neglect, failed to record the same prior to conveying lots shown thereon, may, within one year after this act takes effect, petition the superior court of the county wherein such land is situate for an order permitting such map or plat to be filed and recorded as in said act provided; and the court may, upon the hearing of such petition, if satisfied that good cause exists therefor, make such order. A copy of the petition shall be served upon the county recorder at least ten days prior to such hearing, and a certified copy of such order, if any be made, shall be filed with the map.

Statutes of 1913, Chapter 306.

Section 165.—JOINT TENANCY DEED.—A deed may be made to grantees who are called joint tenants, with the right of survivorship. That is, if we suppose that a deed of land is made by John Jones, the grantor, to Samuel Green and Sarah Green, his wife, the grantees; the deed may lawfully provide that the grantees shall hold the land as joint tenants, and that if one of them dies the title shall remain in the survivor.

Section 166.—FORM OF JOINT TENANCY DEED.—The following is a form of joint tenancy deed:

THIS INDENTURE, Made the.....day of  
....., in the year of our Lord one thousand  
nine hundred and.....  
between John Jones, of the County of Los Angeles, State  
of California, the party of the first part, and Samuel  
Green and Sarah Green, his wife, of the same place, as  
joint tenants, with the right of survivorship, the parties  
of the second part,

WITNESSETH: That the said party of the first part, for  
and in consideration of the sum of.....Dollars,  
in Gold Coin of the United States of America, to him in  
hand paid by the said parties of the second part, the re-  
ceipt whereof is hereby acknowledged, does by these  
presents grant, bargain and sell, convey and confirm unto  
the said parties of the second part, as joint tenants, and  
to the survivor of them forever, all that certain real  
property situate in the.....,  
County of.....State of California, and  
particularly described as follows:.....  
.....  
.....  
.....

Together with all and singular the tenements, heredita-  
ments and appurtenances thereunto belonging or in any-  
wise appertaining, and the reversion and reversions, re-  
mainder and remainders, rents, issues and profits thereof.

To have and to hold all and singular the said premises, together with the appurtenances, unto the said parties of the second part and to the survivor of them forever.

IN WITNESS WHEREOF the said party of the first part has hereunto set his hand..... and seal..... the day and year in this indenture first above written.

.....(Seal)

Signed, Sealed and Delivered in the Presence of

STATE OF CALIFORNIA, }  
.....COUNTY. } ss.

On this.....day of..... in the year of our Lord one thousand nine hundred and....., before me,....., a Notary Public in and for said County of....., State of California, residing therein, duly commissioned and sworn, personally appeared.....

..... known to me to be the person..... described in and whose name is subscribed to the foregoing instrument and ..... he..... acknowledged to me that ..... he..... executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

..... Notary Public in and for the County of  
....., State of California.

My commission expires....., 19......

Section 167—RECORD TITLE OF SURVIVOR IN JOINT TENANCY.—For a long time much uncertainty existed as to the exact status of the surviving joint tenant, and in what manner his title could be exhibited or proved by the official records. The Legislature of California in 1917 passed a law intended to remove all doubts, and to provide for a



positive and permanent record of the title of the surviving joint tenant. The Act reads as follows:

If any person has died or shall hereafter die who at the time of his death was the owner of a life estate which terminates by reason of the death of such person; or if such person at the time of his death was one of two or more persons holding land in joint tenancy, which land by reason of his death vests absolutely in the surviving joint tenant or tenants; or if such person at the time of his death was the spouse of a person owning land upon which either spouse had declared a homestead, the homestead interest of which deceased person absolutely terminated by reason of his death; any person interested in the land, or in the title thereto, in which such estate or interest was held, may file in the superior court of the county in which the land or any part thereof is situated, his verified petition setting forth such facts, and thereupon and after such notice of publication or otherwise as the court may order, (*provided*, that notice shall be given in each county where any part of said land is situated in the same manner as in the county where said petition is filed,) the court shall hear such petition and the evidence offered in support thereof, and if upon such hearing it shall appear that such estate or interest so terminated or vested, the court shall make a decree to that effect, and thereupon a certified copy of such decree shall be recorded in the office of the county recorder of each county in which any part of said land is situated, and thereafter shall have the same effect as a decree of final distribution so recorded; *provided*, that if such estate or interest was a joint tenancy, any inheritance tax which is due and payable by reason of the death of such deceased person, must be fully paid before such decree is made; and the amount of said inheritance tax shall be fixed, and said tax shall be paid, in the same manner as in the case of an administration upon the estate of a decedent.

Act of the Legislature, approved May 31, 1917;  
in effect July 30, 1917.

## INSTALLMENT SALES OF REAL ESTATE.

Section 168—SALES ON THE INSTALLMENT PLAN.—Real estate may be sold on the installment plan, the purchaser agreeing to make certain payments at stated times, the title to remain in the vendor until full payment is made. This is what is termed a conditional sale. The buyer may be let into the possession of the property, and yet the legal title will remain with the seller, if it is expressed in the agreement of sale that all installments must be paid before the title will pass or deed be given. The agreement for sale of real property on the installment plan must be in writing, and the agreement should be recorded. If recorded, it is notice to the world that the grantee has a claim upon the land, and the right to obtain the legal title by making stipulated payments.

Section 169—PAYMENT OF INSTALLMENTS.—Where the agreement provides that time shall be of the essence of the contract and that payments shall be made in installments at specified times, it is essential that the purchaser pay each installment as it becomes due, if he wishes to keep the contract good. He must pay, for if he does not, the seller may rescind the contract and forfeit the payments already made.

Section 170—VENDOR'S REMEDY IF INSTALLMENTS ARE NOT PAID.—If the purchaser fails to pay any installment, when due, the seller may rescind the contract. He cannot do this arbitrarily, however, without regard to the rights of the purchaser. The seller should give reasonable notice to the purchaser, that the unpaid installment must be paid, or otherwise the contract will be rescinded and canceled and all prior payments forfeited. If, after receiving this notice, the purchaser still fails to pay the installment, the vendor may cancel the contract, retain the money already paid, and regain the possession of the property. If the purchaser is in possession of the prop-

erty, and refuses to give it up, the vendor may bring a suit for ejectment, and the courts will put him in possession.

The vendor is not compelled to cancel the contract, however. For he may, on the contrary, sue the purchaser for the amount of each installment, as default is made in its payment, and get a judgment against him. The effect of this will be to enforce and maintain the contract of sale, and the judgment against the purchaser for the installments due can be collected out of his property.

Where there is an absolute agreement on the part of the purchaser, that, if payment is not made at the exact time stipulated therefor, all his rights thereunder shall be forfeited, the courts of California will enforce the contract as it finds it. The hardship of any case will not justify a court in setting aside the solemn agreement of the parties.

The vendor cannot wait until all the installments are due, before he takes action, and then expect the courts to enforce the contract as harshly as it may be drawn up between the parties. If he waits until all the installments are due, he must tender a deed of the land to the purchaser and demand payment of the installments due, if he wishes to enforce the contract. A vendor who waits until the last installment of the purchase price is due cannot sue the vendee for the unpaid purchase money without proof of performance, or readiness to perform, on his part; and the tender of a deed before suit is not alone sufficient, but the tender must be kept good during the court proceedings; the deed must be kept in readiness to deliver, should the vendee elect to pay up and receive the title.

The vendor may sue to compel the purchaser to carry out the contract, and the courts will give damages for failure to do so. The damages allowed will be the difference in the value of the land at the time of the suit and the contract price. The reason of this rule of damages is, the property may have increased in value, and thus the

vendor may not be damaged at all, or may even be benefited, when he gets the property back.

**Section 171.—PURCHASER'S REMEDY IF VENDOR FAILS TO FULFILL CONTRACT.**—It may happen that the vendor, when the time comes when he should make a deed conveying the title to the purchaser, is unable to do so. He may have been mistaken as to his own title, or some other circumstances may render it impossible for the vendor to meet his obligation, so that he cannot convey a title to the land to the purchaser. In such case, the law is, the purchaser may sue the vendor, and recover back the money he has paid, with interest thereon. If the purchaser has been in possession, and has made improvements on the land, the value of the improvements may also be recovered, if the vendor misrepresented the facts and thereby induced the purchaser to buy.

**Section 172.—FORM OF INSTALLMENT AGREEMENT FOR SALE OF REAL ESTATE.**—The following is a form of installment contract for the sale of real estate:—

This Agreement, made and entered into on the..... day of....., in the year of our Lord one thousand nine hundred and....., between....., of the County of....., State of California, the party of the first part, and....., of the same place, the party of the second part, witnesseth:

That the said party of the first part, in consideration of the covenants and agreements on the part of the said party of the second part, hereinafter contained, agrees to sell and convey unto the said party of the second part, and said second party agrees to buy, all that certain lot and parcel of land situate in the County of....., State of California, bounded and described as follows, to-wit:.....

(Here insert description of land.)

for the sum of..... Dollars, lawful money



of the United States, to be paid in the manner following, to-wit: ..... Dollars on the execution of this contract, the receipt whereof is hereby acknowledged, and the remainder in monthly installments of.....

..... Dollars, payable on the first day of each and every month thereafter, until the whole of said purchase price shall have been paid, together with interest on deferred payments at the rate of..... per cent per annum from date until paid.

And the said party of the second part agrees to pay all State, City, and County taxes, or assessments of whatsoever nature, which are or may become due on the premises above described.

In the event of a failure to pay the said installments, or any of them, by the party of the second part, as said installments or installment shall become due, the said party of the first part shall be released from all obligation in law or equity to convey said property, and the said party of the second part shall forfeit all rights thereto, and all payments theretofore made by said party of the second part shall be thereby forfeited to the party of the first part.

Time is the essence of this contract.

And the said party of the first part, on receiving such payments, at the time and in the manner above mentioned, agrees to execute and deliver to the said party of the second part, or to his assigns, a good and sufficient deed conveying the title to said property herein described, free and clear of incumbrances.

And it is understood that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators, and assigns of the respective parties hereto, and that said party of the second part is to be let into and have immediate possession of said premises.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

..... (Seal.)

..... (Seal.)

(If the above agreement is intended to be recorded, it must be acknowledged.)

## EMPLOYER AND EMPLOYEE

Section 173.—CONTRACT OF EMPLOYMENT.—The contract of employment is one by which a person, called an employer, engages another, called an employee, to do something for a compensation. In such a contract there is always either an express agreement or an implied agreement to pay a compensation for the services performed. If the agreement between the employer and the employee fixes the compensation, the law will not interfere with it; but if there is a contract of employment, and no rate of compensation is fixed by the parties, then the law will imply an obligation on the part of the employer to pay what the services performed by the employee were reasonably worth.

Section 174.—OBLIGATIONS OF THE EMPLOYER.—It may be stated generally of the obligations of the employer, which he assumes towards the employee, by the contract or relation which they mutually enter into, that by the law of California the employer is bound to provide a safe place and safe appliances and machinery for the performance by the employee of his work; that the employer is bound to inform the employee of anything within his own knowledge which renders the place or appliances dangerous, or which increases the ordinary risks of the employment, and which knowledge is not equally open to the observation of the employee; that the employer is bound to use reasonable care and diligence in the selection of competent fellow-servants, and he will be liable to an employee for injuries sustained by reason of his negligence in hiring incompetent employees to work with him; that the employer must keep in safe condition the premises in which his employee works, and must use ordinary care in the inspection and repair of such premises, and in the inspection and repair of machinery and appliances used by him. Also, the law provides that the employer must indemnify his employee for all that he necessarily ex-

pende or loses in direct consequence of the discharge of his duties or in obedience to the directions of the employer, provided that an employer is not bound to indemnify his employee for losses suffered by the latter in consequence of the ordinary risks of the business in which he is employed. And an employer must in all cases indemnify his employee for losses caused by the employer's want of ordinary care, provided that the employee's own negligence must not contribute to his own injury. It is the duty of the employer to inform his employee of latent defects, or extraordinary dangers or risks, connected with the service, of which the employer has knowledge, but which are unknown to the employee. If the employer does not inform the employee of such defects or dangers, he will be liable for damages if the employee is injured. (Decided by the Supreme Court of California, in the case of *Bone vs. Ophir Silver Mining Co.*, which decision is printed in Volume 86 of the *Pacific Reporter*, page 685.)

Section 175.—OBLIGATIONS OF THE EMPLOYEE.—The law imposes upon the employee the obligation of serving his employer in good faith, using ordinary care and diligence, and all the skill which he possesses, in serving his employer's interest during his employment. The employee must substantially comply with all the reasonable directions of his employer concerning the service on which he is engaged, except where it is impossible or unlawful for him to do so. Everything which the employee acquires by virtue of the employment belongs to the employer, except the compensation which is due to him from the employer. An employee must, on demand, render to his employer just accounts of all his transactions in the course of his employment, and must render such accounts as often as may be reasonable. An employee who has any business to transact on his own account, similar to that intrusted to him by his employer, must always give the latter the preference. An employee who is guilty of gross negligence in the performance of his duties is liable to his

employer for the damages thereby caused to him; and in such case the employer is only liable to the employee for the value of such services as are properly rendered.

Civil Code, Sections 1978, 1981, 1984, 1985, 1986, 1988, 1990.

Section 176.—TERMINATION OF EMPLOYMENT.—The employment may be terminated at any time by the mutual agreement of the parties. The employment is also terminated by the expiration of the term contracted for, or by the extinction of its subject, or by the death of the employee, or by the legal incapacity of the employee to act, as in the case where the employee becomes insane. An employment will also be terminated by notice of the death of the employer, and by notice of his legal incapacity to contract; but there is an exception to this rule in cases where the employee has an interest in the subject of the employment, as where, by the terms of the contract of employment, the employee is to have a part ownership of the thing upon which he is employed. An employment having no specified term may be ended at the will of either party, on notice to the other. The employer may discharge the employee for any wilful breach of duty by him in the course of his employment, or in case of the habitual neglect of his duty by the employee, or long-continued incapacity to do his work; and the employee may quit the service of his employer, even though he has contracted for a specified term, where the employer is guilty of any wilful or permanent breach of his obligations to the employee, as where the employer fails to provide a safe place to work or safe appliances or competent fellow-servants, or in any other way wilfully fails to keep the obligations which the law or his own contract enjoins upon him for the benefit of the employee. An employee, dismissed by his employer for good cause, is not entitled to any compensation for services rendered since the last contract. An employee who quits the service of the employer upon which a payment became due to him under the



ployer for good cause is entitled to a proportionate payment of the compensation which he would have received under a full performance of the contract, as compared with the portion of the services already performed by him.

Civil Code, Sections 1996, 1997, 1999, 2000, 2001, 2002, 2003.

Section 177.—SANITARY CONDITION OF WORKSHOPS.—Factories and workshops must be kept in good sanitary condition. Where dust, filaments, or injurious gases are produced or generated, exhaust fans or blowers must be used, with pipes and hoods extending to each machine.

Act of the Legislature, approved February 22, 1909.

Section 178.—CONTRACT FOR PERSONAL SERVICES.—A contract to render service, other than a contract of apprenticeship, cannot be enforced against the employee beyond the term of five years from the commencement of service under it; but if the employee voluntarily continues his service under it beyond that time, the contract may be referred to as affording a presumptive measure of compensation.

Act of the Legislature, approved May 25, 1919;  
in effect July 25, 1919.

Section 179.—PAYMENT OF WAGES.—Sec. 1. Whenever an employer discharges an employee, the wages or compensation for labor or service earned and unpaid at the time of such discharge shall become due and payable immediately. Whenever an employee not having a written contract for a definite period quits or resigns his employment, the wages or compensation shall become due and payable not later than seventy-two hours thereafter, unless such employee shall have given seventy-two hours previous notice of his intention to quit, in which latter case such employee shall be entitled to his wages or compensation at the time of quitting.

Section 177, page 228, "Business Law for Business Men"—FOUNDRY AND METAL SHOPS—The owner, employer or manager of every foundry or metal shop engaged in the casting, fabricating or working over in any manner, of iron, brass, steel, or other metal or compound, and where five or more men are employed, shall establish and maintain, for the use of the employees, wash bowls, sinks or other appliances, connected with running water, and also a water closet connected with running water. The room where the wash bowls are installed, and the water closet shall be kept properly ventilated and protected, so far as may be reasonably practicable, from the dust and fumes of the foundry or metal shop.

Whoever fails to comply with the provisions of this act shall be deemed guilty of a misdemeanor and shall be fined not more than one hundred dollars for each offense.

Act of the Legislature of California, approved May 24, 1921; in effect on and after January 1, 1922.



(a) *Wages Due Semi-monthly.*—Sec. 2. All wages or compensation other than those mentioned in section one of this act earned by any person in any employment not exempt by law, shall become due and payable semi-monthly or twice during each calendar month, on days to be designated in advance by the employer as the regular pay days; *provided, however*, that services rendered between the first and fifteenth days, inclusive, of any calendar month shall be paid for between the sixteenth and the twenty-sixth day of the month during which services were rendered, and for all services rendered between the sixteenth and the last day, inclusive, of any calendar month, said services shall be paid for between the first and tenth day of the following month; *provided, however*, that in agricultural, viticultural and horticultural pursuits, in stock or poultry raising, and in household domestic service, and when the employees in the said employments are boarded and lodged by the employer, the wages or compensation due any employee remaining in such employment shall become due and payable monthly or once in each calendar month, on a day designated in advance as the regular pay day, but no two successive pay days to be more than thirty-one days apart, and the payment or settlement shall include all amounts due for labor or service up to the regular pay day.

(b) *What Wages Shall Include.*—Sec. 3. The wages or compensation subject to the provisions of this act shall include all amounts for labor or service performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, or other method of calculating the same, or whether the labor or service is performed under contract, subcontract, partnership, subpartnership, station plan, or other agreement for the performance of labor or service; *provided*, that the labor or service to be paid for is performed personally by the person demanding payment. Nothing contained in this act shall in any way limit or prohibit the



payment of wages or compensation at more frequent intervals, or in greater amounts, or in full when or before due.

(c) *Notice of Time and Place of Payment.*—Sec. 4. Every employer shall post and keep posted conspicuously at the place of work, if practicable, or otherwise where it can be seen as employees come or go to their place of work, or at the office or nearest agency for payment kept by the employer, a notice specifying the regular pay days and the time and place of payment, also any changes in those regards occurring from time to time. Every employee who is discharged shall be paid at the place of discharge, and every employee who quits or resigns shall be paid at the office or agency of the employer in the county or city and county where such employee has been performing the labor or service for the employer. In the happening of any strike, the unpaid wages or compensation earned by such striking employees shall become due and payable on the employer's next regular pay day, and the payment or settlement shall include all amounts due such striking employees without abatement or reduction, and the employer shall return to each such striking employee any deposit or money or other guaranty required by him from such employee for the faithful performance of the duties of the employment. Any violation of the provisions of this section shall be punishable as for a misdemeanor, and any failure to post any notice as in this section prescribed shall be deemed *prima facie* evidence of a violation of this act.

(d) *Failure of Employer to Pay.*—Sec. 5. In the event that an employer shall wilfully fail to pay, without abatement or reduction, any wages or compensation of any employee who is discharged or who resigns or quits, as in section one of this act provided, then as a penalty for such nonpayment the wages or compensation of such employees shall continue from the due date thereof at the same rate until paid, or until an action therefor shall be commenced; *provided*, that in no case shall such wages

Section 179, page 228, "Business Law for Business Men"—On page 231 add the following to section 179, after sub-division (e):

(f) There shall not be deducted from the wages of an employee, on account of the employee's coming late to work, a sum in excess of the proportionate wage which would have been earned during the time actually lost; **provided**, that for a loss of time less than thirty minutes a half hour's wage may be deducted.

Act of the Legislature of California, approved June 3, 1921; in effect August 3, 1921.



continue for more than thirty days; *and provided, further*, that no such employee who secretes or absents himself to avoid payment to him, or who refuses to receive the payment when fully tendered to him, including any penalty then accrued under the provisions of this section, shall be entitled to any benefit under this act for such time as he so avoids payments.

(e) *Refusal of Employer to Pay.*—Sec. 6. Any person, firm, association, or corporation, or agent, manager, superintendent, or officer thereof, who having the ability to pay, shall wilfully refuse to pay the wages due and payable when demanded, as herein provided, or falsely deny the amount or validity thereof, or that the same is due, with intent to secure for himself, his employer or other person, any discount upon such indebtedness, or with intent to annoy, harass, or oppress, or hinder, or delay, or defraud, the person to whom such indebtedness due, shall, in addition to any other penalty imposed upon him by this act, be guilty of a misdemeanor.

Act of the Legislature, approved May 6, 1919;  
in effect July 22, 1919.

Section 180.—MINORS—HOURS OF LABOR.—No minor under the age of eighteen years shall be employed in laboring in any manufacturing, mechanical, or mercantile establishment or other place of labor, more than eight hours in one day of twenty-four hours, or more than forty-eight hours in one week, except when it is necessary to make repairs to prevent interruption of the ordinary running of the machinery, or when a different apportionment of the hours of labor is made for the sole purpose of making a shorter day's work for one day of the week, nor before the hour of five o'clock in the morning, nor after the hour of ten o'clock in the evening.

Act of the Legislature, approved May 10, 1919;  
in effect July 22, 1919.

Section 181.—CHILD LABOR LAW.—A law was passed in 1919 to regulate child labor in California.



(a) *Children Under Sixteen.*—No minor under the age of sixteen years shall be employed, permitted or suffered to work in or in connection with any mercantile establishment, manufacturing establishment, mechanical establishment, workshop, office, laundry, place of amusement, restaurant, hotel, apartment house, or in the distribution or transmission of merchandise or messages, or in any other place of labor at any time except as may be permitted under school certificates.

(b) *Work Defined.*—Work shall be deemed to be done for a manufacturing establishment within the meaning of this act, whenever it is done at any place upon the work of a manufacturing establishment, or upon any of the materials entering into the products of a manufacturing establishment, whether under contract or arrangement with any person in charge of or connected with a manufacturing establishment directly or indirectly through the instrumentality of one or more contractors or other third persons.

(c) *Messenger Service.*—No girl under the age of eighteen years and no boy under the age of sixteen years shall be employed, permitted or suffered to work as a messenger for any telegraph, telephone or messenger company, or for the United States government or any of its departments while operating a telegraph, telephone or messenger service, in the distribution, transmission or delivery of goods or messages in towns of more than fifteen thousand inhabitants, nor shall any boy under the age of eighteen years be employed, permitted or suffered to engage in any of the work last mentioned before the hour of six o'clock in the morning or after the hour of nine o'clock in the evening.

(d) *Street Trades.*—No boy under ten years of age, nor girl under eighteen years of age, shall be employed, permitted or suffered to work at any time in or in connection with the street occupation of peddling, bootblackening, the sale or distribution of newspapers, magazines, periodicals or circulars nor in any other occupation pursued

in any street or public place; *provided, however*, that nothing in this section shall be construed to apply to cities whose population is less than twenty-three thousand according to the last federal census.

(e) *Prohibited Occupations*.—No minor under the age of sixteen years shall be employed, permitted or suffered to work in any capacity at any of the following occupations or in any of the following positions, to-wit:

(1) Adjusting any belt to any machinery, or sewing or lacing machine belts in any workshop or factory, or oiling, wiping or cleaning machinery, or assisting therein, or operating or assisting in operating any of the following machines: (a) Circular or band saws; (b) wood shapers; (c) wood jointers; (d) planers; (e) sandpaper or wood-polishing machinery; (f) wood-turning or boring machinery; (g) picker machines or machines used in picking wool, cotton, hair or any other material; (h) carding machines; (i) paper-lace machines; (j) leather-burnishing machines; (k) printing presses of all kinds; (l) boring or drill presses; (m) stamping machines used in sheet-metal and tinware or in paper and leather manufacturing, or in washer and nut factories; (n) metal or paper-cutting machines; (o) corner-staying machines in paper box factories; (p) corrugating rolls, such as are used in corrugated paper, roofing or washboard factories; (q) steam boilers; (r) dough brakes or cracker machinery of any description; (s) wire or iron straightening or drawing machinery; (t) rolling mill machinery; (u) power punches or shears; (v) washing, grinding or mixing machinery; (w) calendar rolls in paper and rubber manufacturing; (x) laundering machinery; or in proximity to any hazardous or unguarded belts, machinery or gearing; or (2) upon any railroad, whether steam, electric or hydraulic; or (3) upon any vessel or boat engaged in navigation or commerce within the jurisdiction of this state; or (4) in, about, or in connection with any processes in which dangerous or poisonous acids are used; or (5) in the manufacture or packing of paints, colors,

white or red lead; or (6) in soldering; or (7) in occupations causing dust in injurious quantities; or (8) in the manufacture or use of dangerous or poisonous dyes; or (9) in the manufacture or preparation of compositions with dangerous or poisonous gases; or (10) in the manufacture or use of compositions of lye in which the quantity thereof is injurious to health; or (11) on scaffolding; or (12) in heavy work in the building trades; or (13) in any tunnel or excavation; or (14) in, about or in connection with any mine, coal breaker, coke oven, or quarry; or (15) in assorting, manufacturing or packing tobacco; or (16) in operating any automobile, motor car or truck; or (17) in a bowling alley; or (18) in a pool or billiard room; or (19) in any other occupation dangerous to the life or limb, or injurious to the health or morals of such child; *provided, however*, that the provisions of this section shall not apply to the courses of training in vocational or manual training schools or in state institutions.

(f) *Bureau of Labor Statistics to Determine Whether Business Is Prohibited.*—The bureau of labor statistics may, from time to time, after a hearing duly had, determine whether or not any particular trade, process of manufacture or occupation, in which the employment of children under the age of sixteen years is not already forbidden by law, or any particular method of carrying on such trade, process of manufacture or occupation, is sufficiently dangerous to the lives or limbs or injurious to the health or morals of children under sixteen years of age to justify their exclusion therefrom. No child under sixteen years of age shall be employed, permitted or suffered to work in any occupation thus determined to be dangerous or injurious to such children. There shall be a right of appeal to the superior court from any such determination.

(g) *Agricultural Labor.*—Nothing in this act shall be construed to prohibit the employment of minors sixteen years of age or over at agricultural, horticultural, or viticultural, or domestic labor for more than eight

hours in one day or more than forty-eight hours in one week. Nor shall anything in this act be construed to prohibit the employment of minors at agricultural, horticultural, or viticultural, or domestic labor during the time the public schools are not in session, or during other than school hours. For the purpose of this act, horticultural shall be understood to include the curing and drying, but not the canning, of all varieties of fruit. Nor shall anything in this act be construed to prohibit any minor between the ages of fifteen and eighteen years, who is by any statute or statutes of the State of California, now or hereafter in force, permitted to be employed as an actor, or actress, or performer in a theater or other place of amusement, previous to the hour of ten o'clock p. m., in the presentation of a performance, play or drama, continuing from an earlier hour till after the hour of ten o'clock p. m., from performing his or her part in such presentation as such employee between the hours of ten and twelve o'clock p. m.; *provided*, the written consent of the commissioner of the bureau of labor statistics is first obtained. Nor shall anything in this act prevent, or be construed to prohibit, the employment of any minor, whether resident or nonresident, in the presentation of a drama, play, performance, concert or entertainment, with the written consent of the commissioner of the bureau of labor statistics, but no such consent shall be given unless the officer giving it is satisfied that the environment in which the drama, play, performance, concert or entertainment is to be produced is a proper environment for the minor, and that the conditions of such employment are not detrimental to the health of such minor, and that the minor's education will not be neglected or hampered by its participation in such drama, play, performance, concert or entertainment, and the commissioner may require the person charged with the issuance of age and schooling certificates to make the necessary investigation into such conditions; and every such written consent shall specify the name and age of the minor together with such



other facts as may be necessary for the proper identification of such minor, and the date when, and the theaters or other places of amusement in which such drama, play, performance, concert or entertainment is to be produced, and shall specify the drama, play, performance, concert, or entertainment in which the minor is permitted to participate, and every such consent shall be revocable at the will of the officer giving it. Dramas and plays shall include the production of motion picture plays.

(h) *Employer to Keep Register*.—Every person, firm, corporation or agent, or officer of a firm or corporation, employing either directly, or indirectly through the instrumentality of one or more contractors or other third persons, minors under the age of eighteen years, shall keep a separate register containing the names, ages and addresses of such minor employees and shall post and keep posted in a conspicuous place in every room where such minors are employed, a written or printed notice stating the hours per day for each day of the week required of such minors, and shall keep on file all permits and certificates either to work or to employ. Such records and files shall be open at all times to the inspection of the school attendance and probation officers, the state board of education and the officers of the state bureau of labor statistics.

All such certificates and permits to work or to employ shall be returned to the authority issuing the same within five days after the minor quits his employment. Such certificate or permit shall be subject to cancellation at any time by such commissioner of the bureau of labor statistics, or by the authority issuing the same, whenever such commissioner or such issuing authority shall find that the conditions for the legal issuance of such certificate or permit no longer exist or have never existed.

(i) *Report by Authority Issuing Permits*.—At least once in every six months, to-wit, on or before January tenth and on or before July tenth of each year, the authority issuing all permits and certificates either to work



or to employ, shall file a full written report of the same, stating the names, ages and addresses of the minors under sixteen years of age affected thereby, with the state bureau of labor statistics and the state board of education.

(j) *Penalty*.—Any person, firm, corporation, agent, or officer of a firm or corporation, employing either directly or indirectly through the instrumentality of one or more contractors or other third persons, or any parent or guardian of a minor affected by this act, who violates or omits to comply with any of the provisions hereof, or who employs or suffers or permits any minor to be employed in violation thereof, is guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than fifty dollars, nor more than two hundred dollars, by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment for each and every offense.

A failure to produce any permit or certificate either to work or to employ or to post any notice required by this act shall be prima facie evidence of the illegal employment of any minor whose permit or certificate is not so produced or whose name is not so posted.

Act of the Legislature, approved May 10, 1919;  
in effect July 22, 1919.

Section 182.—AGE AND SCHOOLING CERTIFICATES.—The superintendent of schools of any city, or of any city and county or of any county (over such portions of any such county as are not within the jurisdiction of any superintendent of city schools) shall have authority to issue to any employer a permit to employ any minor of the age of fourteen years who holds a diploma of graduation from the prescribed elementary school course; *provided*, that such permit shall be issued only when the prospective employer, or the parent or guardian of the minor, shall present to the superintendent asked to issue such permit, (1) a physician's certificate or other evidence

acceptable to such authority, that such minor is physically fitted for the labor contemplated; and (2) a sworn statement by the parent, foster-parent or guardian of such minor that such minor is past the age of fourteen years, and that the parent or parents, or foster-parent or foster-parents, or guardian of such minor is incapacitated for labor through illness or injury, or that through the death or desertion of the father of such minor, the family is in need of the earnings of such minor, and that sufficient aid cannot be secured in any other manner. The person authorized to issue such permit in granting the same shall make a signed statement that he, or a competent person designated by him for this purpose, has carefully investigated the conditions under which the application for such permit has been asked, and has found that in his judgment the earnings of such minor are necessary for such family to support such minor, and that in his judgment sufficient aid cannot be secured in any other manner. No permit shall be issued except upon a written statement from a prospective employer that work is waiting for such minor and describing the nature of such work. Such permit shall specify the name and address of the employer, the name, address and age of the minor, the kind of work for which the permit is issued and the date on which the permit shall expire, which in no case shall be longer than six months from the date of issuance of the permit. Such permit shall be kept on file by the employer during the term of such employment and all unexpired permits shall be returned by the employer to the authority issuing the same within five days after the termination of such employment. Such permit shall be subject to cancellation at any time by the superintendent of public instruction, or by the commissioner of the bureau of labor statistics or by the person issuing the same, whenever any such officer or person shall find that the conditions for the legal issuance of such permit do not exist. Such permit shall be always open to inspection by attendance and

probation officers, by the officers of the state bureau of labor statistics and by officers of the superintendent of public instruction, and of the state board of education.

Section 183.—VACATION PERMITS FOR MINORS BETWEEN TWELVE AND FIFTEEN.—Any minor over the age of twelve years and under the age of fifteen years who holds a vacation permit may be employed on the regular weekly school holidays and during the regular vacation of the public schools of the school district, city, or city and county, in which the place of employment is situated. Vacation permits shall be signed by the principal of the school or secretary of the board of school trustees or board of education having control of the school which such minor is attending, or has attended during the term next preceding any such vacation. Such permit shall contain the name and age of the minor to whom it is issued, and when issued for the regular vacation, the date of the termination of the vacation for which it is issued, and in any case shall be kept on file by the employer during the period of employment, and at the termination of such employment shall be returned to the minor to whom it was issued.

Section 184.—AGE AND SCHOOLING CERTIFICATE FOR MINORS OVER FIFTEEN.—No minor of the age of fifteen years shall be employed, permitted or suffered to work during the hours the public schools are in session, unless such minor is provided with an age and schooling certificate as herein provided.

An age and schooling certificate shall be approved only by the superintendent of schools of the county, city or city and county, or by a person authorized by him in writing, and each application for an age and schooling certificate must be acted upon within three days after such application has been duly filed with the person legally authorized to issue such age and schooling certificate. The person authorized to issue age and schooling certifi-

icates shall not issue such certificates until the minor in question, accompanied by its parent or guardian, has personally made application to him therefor, and until he has received, examined, approved and filed the following papers duly executed: (1) The school record of such minor, giving age, grade and attendance for the current term, duly signed by the principal or teacher. (2) Evidence of age such as the school enrollment record, or a certificate of birth, or a certificate of baptism duly attested, or a passport, or affidavit of the parent, guardian or custodian of such minor, such as shall convince such officer that the minor is fifteen years of age or upwards. (3) The written statement of the person, firm or corporation in whose service the minor is about to enter, that he intends to employ the minor, which statement shall give the nature of the occupation for which the child is to be employed. (4) A certificate signed by a physician appointed by the school board, or other public medical officer, stating that such minor has been examined by him, and, in his opinion, has reached the normal development of a minor of its age and is in sufficiently sound health and physically able to be employed in the work which it intends to do; *provided, however*, that no fee shall be charged the minor for such physician's certificate.

Act of the Legislature, approved May 10, 1919;  
in effect July 22, 1919.

Section 185.—HOURS OF LABOR OF WOMEN IN CALIFORNIA.—No female shall be employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel, public lodging house, apartment house, hospital, place of amusement, or restaurant, or telegraph or telephone establishment or office, or in the operation of elevators in office buildings or by any express or transportation company in this state more than eight hours during any one day of twenty-four hours or more than forty-eight hours in one week. It shall be unlawful for any employer of labor to employ, cause to be employed or



Section 185, page 240, "Business Laws for Business Men"—LIFTING HEAVY WEIGHTS—After section 185 add a new sub-division, as follows:

(a) Boxes, baskets or other receptacles which with their contents weigh seventy-five pounds or over and which are to be moved by female employees in any mill, workshop, packing, canning or mercantile establishment, shall be equipped with pulleys, casters or other contrivances connected with or upon which such boxes or other receptacles are placed so that they can be moved easily from place to place in such establishments.

No female employee shall be requested or permitted to lift any box, basket, bundle, or other receptacle or container which with its contents weighs seventy-five pounds or over. Whoever violates the provision of this act shall be deemed guilty of a misdemeanor and be punished by a fine not exceeding fifty dollars for every day during which there shall be a failure to equip or provide such boxes, baskets or other receptacles with some one of the appliances specified in section one of this act.

Act of the Legislature of California, approved June 3, 1921; in effect August 3, 1921.





permit any female employee to labor any number of hours whatever, with knowledge that such female has heretofore been employed within the same date and day of twenty-four hours in any establishment and by any previous employer, for a period of time that will, combined with the period of time of employment by a previous employer exceed eight hours; *provided*, that this shall not prevent the employment of any female in more than one establishment where the total number of hours worked by said employee does not exceed eight hours in any one day of twenty-four hours. If any female shall be employed in more than one such place, the total number of hours of such employment shall not exceed eight hours during any one day of twenty-four hours or forty-eight hours in one week. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than eight hours during the twenty-four hours of one day, or forty-eight hours during any one week; *provided, further*, that the provisions of this section in relation to hours of employment shall not apply to or affect graduate nurses in hospitals, nor the harvesting, curing, canning or drying of any variety of perishable fruit, fish or vegetable during such periods as may be necessary to harvest, cure, can or dry said fruit, fish or vegetable in order to save the same from spoiling.

Act of the Legislature, approved May 10, 1919;  
in effect July 22, 1919.

Section 186.—FORCING EMPLOYEES TO PATRONIZE EMPLOYER.—It is unlawful for any employer of labor, or any officer, agent or employee of any employer of labor to make, adopt or enforce any rule or regulation compelling or coercing any employee to patronize said employer, or any other person, firm or corporation, in the purchase of anything of value; *provided, however*, that nothing herein shall be interpreted as prohibiting any employer of labor from prescribing the weight, color, quality, tex-

ture, style, form and make of uniforms required to be worn by their employees.

Any person, whether as an individual, or as an agent or employee of a firm, or as an officer, agent or employee of a corporation, who shall violate any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment.

Act of the Legislature, approved April 26, 1917;  
in effect July 27, 1917.

Section 187.—REGISTRATION OF FACTORIES.—The owner of any factory, workshop, mill or other manufacturing establishment, where five or more persons are employed, shall register such factory, workshop, mill or other manufacturing establishment with the bureau of labor statistics, giving the name of the owner, the name under which the business is carried on, the location of the plant, the address of the general offices or principal place of business and such other information as the commissioner of labor shall require. All factories, workshops, mills or other manufacturing establishments hereafter established shall be so registered within thirty days after the commencement of business. Within thirty days after a change in the location of a factory, workshop, mill or other manufacturing establishment the owner thereof shall file with the commissioner of the bureau of labor statistics the new address.

Act of the Legislature, approved May 5, 1917;  
in effect July 27, 1917.

Section 188.—MUNICIPAL EMPLOYEES—HOURS OF REST. Any person in the employ of a municipal corporation and whose hours of labor exceed one hundred and twenty hours in a calendar week of seven days, shall be entitled to be off duty at least three hours during every twenty-

four hours for the purpose of procuring meals, and no deduction of salary shall be made by reason thereof.

Act of the Legislature, approved June 1, 1917;  
in effect July 31, 1917.

Section 189.—WORKMEN'S COMPENSATION LAW.—See the subject, "Workmen's Compensation Law."

Section 190.—MASTER AND SERVANT.—There is a kind of employment which is distinguished under the head of "Master and Servant," in the law of California, as in the law of other countries. The term applies particularly to one who is employed to render personal service to his employer, otherwise than in the pursuit of an independent calling, and who in such service remains entirely under the control and direction of the latter, who is called his master. The word "servant" is not confined by our law to persons who are in domestic service, but it includes all who are entirely under the direction and control of the employer, with no independent choice or business of their own, in rendering of personal services of any kind.

Section 191.—TERM OF HIRING OF SERVANT.—A servant is presumed to have been hired for such length of time as the parties adopt for the estimation of wages. A hiring at a yearly rate is presumed to be for one year; a hiring at a daily rate, for one day; a hiring by piece-work, for no specified term. Custom in a particular employment or a particular place may change the case, but if there is no agreement or custom as to the term of service, the time of payment, or rate or value of wages, a servant is presumed to be hired by the month, at a monthly rate of reasonable wages, to be paid when the services are performed. Where after the expiration of an agreement respecting wages and term of service, the parties continue the relation of master and servant, they are presumed to have renewed the agreement for the same wages and term. The Bank of Suisun employed a bookkeeper, for the year 1898, at an annual salary of

\$1,200, payable monthly, and he continued in that employment during the first two months of 1899. He was then discharged, and he sued the bank for \$1,000, the balance of his salary for the year. There was a judgment of the Superior Court for the amount against the bank, and the Supreme Court decided the case against the bank, saying: "The presumption arises that the employment was renewed for the same wages and term as for the previous term." (Decided by the Supreme Court of California in the case of *Gabriel vs. Bank of Suisun*, which decision is printed in Volume 28, *California Decisions*, page 720.)

Civil Code, Section 94.

Section 192.—WHEN SERVANT MAY BE DISCHARGED.—The law is that a master may discharge any servant, other than an apprentice, whether engaged for a fixed term or not, if he is guilty of misconduct in the course of his service; or of gross immorality, though not connected with his service; or if, being employed about the person of the master or in a confidential position, the master discovers that the servant has been guilty of misconduct before or after the commencement of his services, of such a nature that the master, had he known or contemplated the facts, would not have employed him.

Civil Code, Section 2015.

## PRINCIPAL AND AGENT

Section 193.—DEFINITION OF AGENCY.—An agent is one who represents another, called the principal, in dealings with third persons. And as a great part of the business of all communities is transacted through the medium of agents, it is proposed in following sections to give the law of California applying to the relative rights and obligations of Principal and Agent in this state.

Section 194.—KINDS OF AGENCY.—There are two kinds of agents, special agents and general agents. An agent for a particular transaction is called a special agent, be-



cause he is appointed with special power to do that particular thing. A general agent, on the other hand, has a general authority conferred upon him to transact business of his principal, which includes more than one particular act. Any agency, when it exists at all, is either actual or ostensible. An agency is actual when the agent is really employed by the principal. An agency is ostensible when the principal intentionally or by want of ordinary care causes a third person to believe another, who is not really employed by him, to be his agent.

Civil Code, Sections 2230, 2297, 2298, 2299.

Section 195.—AUTHORITY OF AGENT.—An agent has authority to do whatever his principal might do in the business for which he is employed. He has authority to do everything necessary or proper and usual, in the ordinary course of business, for effecting the purpose of his agency. But he has only such authority as the principal confers upon him, and he will be limited in his authority to the particular business for which he is employed. Whatever he does within the scope of his employment, necessary or proper and usual, in the ordinary course of business, to effect the purpose of his agency, will be binding upon his principal. His declarations as to the subject of his agency within the scope of his employment will bind his principal; as where an agent employed to sell goods makes at the time a representation as to their quantity or quality.

Civil Code, Sections 2315, 2319, 2320.

Section 196.—WHAT INCLUDED IN AUTHORITY TO SELL PERSONAL PROPERTY.—An authority to sell personal property includes authority to warrant the title of the principal, and the quality and quantity of the property.

Civil Code, Section 2323.

Section 197.—WHAT INCLUDED IN AUTHORITY TO SELL REAL ESTATE.—An agent's authority to sell and convey

real property includes authority to give the usual covenants of warranty.

Civil Code, Section 2324.

Section 198.—AUTHORITY OF AGENT TO RECEIVE PRICE OF PROPERTY.—A general agent to sell, who is intrusted by the principal with the possession of the thing sold, has authority to receive the price. A special agent to sell has authority to receive the price on delivery of the thing sold, but not afterward. But neither a general nor a special agent to sell has any authority to receive anything but money in payment of the price of the thing sold. Therefore, if the agent sells property of his principal, and accepts part cash and part in something else, the principal will not be bound.

Civil Code, Sections 2325, 2326.

Section 199.—AGENT'S POWER TO DISOBEY INSTRUCTIONS.—An agent has power to disobey his instructions in dealing with the subject of the agency, in cases where it is clearly for the interest of his principal that he should do so, when there is not time to communicate with the principal. The general rule is, that an agent must follow and adhere to the instructions and authority he has received from his principal, but under some circumstances he may depart from his instructions, and the law will justify him, and his principal will be bound. So where, from the necessities of the case, without the agent's fault or neglect, some sudden and unexpected emergency or extraordinary or supervening necessity arises, or some unforeseen event happens, which will not admit of delay for consultation or communication with the principal, if the agent, exercising prudence and sound discretion, in good faith adopts the course which seems best to him, under all the circumstances as they exist, he will be justified, and his acts will bind his principal, though subsequent events may demonstrate that some other course would have been the better.

Section 200.—AGENT CANNOT HAVE AUTHORITY TO DEFRAUD PRINCIPAL.—An agent can never have authority to do any act which is a fraud upon the principal, and is known or suspected by the person with whom he deals to be fraudulent. The agent must act in good faith with his principal, and if he enters into collusion with another to obtain an advantage over his principal, or to obtain the property of the principal for less than it is worth, the courts of this state will be ready to give the principal relief against both, by restoring to him the property of which he has been defrauded, or, if this cannot be done, by giving him damages as compensation. Many illustrations might be given. When an agent invests money belonging to his principal for the purchase of an interest in a syndicate, of which the agent is a member, and in which he holds an interest, and which is indebted in a large amount, and, to induce the investment, leads the principal to believe that he is not a member of the syndicate, or interested therein, and represents that the principal will not have any calls to pay upon becoming a member thereof, the law imputes fraud on the part of the agent, and the principal may avoid the transaction and recover from the agent the amount so invested. So, it is the law of this state, that an agent must not unite his personal and his representative characters in the same transaction; for the law will not permit him to be exposed to the temptation, or brought into a situation where his own personal interests will conflict with the interests of his principal. In dealing without the intervention of his principal, if an agent for the purpose of selling property of the principal purchases it himself, or an agent for the purpose of buying property for the principal buys it from himself, either directly or through the instrumentality of a third person, the sale or purchase is voidable, and will always be set aside at the option of the principal.

Civil Code, Section 2306.

Section 201.—AGENT'S ACTUAL AUTHORITY.—The actual authority of an agent is such as a principal inten-

tionally confers upon him, or intentionally or by want of ordinary care allows the agent to believe himself to be possessed of. An agent's authority is actual when there is a contract of employment existing between him and the principal. The principal may have given the agent instructions to act in a certain way; or a course of dealings or other circumstances between them may have been such as to lead the agent to believe that his authority from the principal extended to the things done; or the principal may have stood by and without objection witnessed the conduct of the agent, and thus made the agent believe that his authority from the principal was sufficient to warrant the acts done by him; and in all such cases the agent will be deemed to have had authority actually given him by the principal.

Civil Code, Sections 2299, 2316.

Section 202.—AGENT'S OSTENSIBLE AUTHORITY.—The ostensible authority of an agent is such as the principal, intentionally or by want of ordinary care, causes or allows a third person to believe the agent possesses. There are two essential features of an ostensible authority; the third party must believe that the agent has authority; and such belief must be generated in his mind by some act or neglect of the person whom he seeks to hold liable as principal. A belief founded on the agent's statement is not sufficient; for a party has no right to take the agent's word for the existence of his authority. But where the agent shows letters or telegrams, which are worded so as to lead a reasonable man to believe that he has received authority from the principal to act for him in a certain way; or where the principal has been in the habit of receiving money, for shipments of products or goods, through the same agent, in similar transactions; or where the principal has been in the habit of honoring drafts signed by the same person as his "agent"; or where similar transactions have occurred in which the acts of the alleged agents were authorized or ratified; in



all such cases, if the third party knows of the former transactions, and has received no notice that the principal will not be responsible, he will be justified in believing that the agent has authority, and the principal will be bound, even though the person for whom the agent assumes to act may not have intended to hold him out as such agent. On the other hand, a principal is bound by acts of his agent, under merely ostensible authority, to those persons only who have in good faith, and without ordinary negligence, incurred a liability or parted with value upon the faith of it. Therefore, if there is anything in the circumstances of a transaction, or in the conduct of one who represents himself as agent, which ought to excite the suspicions or stimulate the inquiry of a reasonable man, and the means of inquiry are open to him, and he neglects to make such inquiry or investigation as a reasonable man under the circumstances should be expected to make, the principal will not be liable for the acts of one who has no actual authority as agent to act for him. The statements of the agent himself do not prove the agency. And one who deals with another, upon his mere statement that he is the agent of a third person, takes upon himself the risk of being able to show, if a dispute occurs, that such agency really existed. He cannot hold the third person as a principal, under such circumstances, unless he can produce proof of the agency aside from the agent's own statements. (Decided by the District Court of Appeals, in the case of *Apler vs. Tormey*, which decision is printed in Volume 85 of the *Pacific Reporter*, page 661.)

Civil Code, Sections 2300, 2334.

Section 203.—RATIFICATION OF AGENT'S ACTS.—A person may ratify the acts of another, done for him as his pretended agent, and so make himself liable, though he had given the agent no authority before the act was done. This ratification may be in many ways. It may be directly, by notice to the party with whom the agent has dealt;



or it may be by receiving and retaining the fruits of the agent's acts; or it may be by silence and failure to object after being fully informed of the facts, for if one is fully informed of a contract made by another in his name, and by virtue of pretended authority from him, and remains silent and does not repudiate the contract within a reasonable time, he is presumed to give his consent and acquiescence to the contract. But a ratification can be made only in the manner that would have been necessary to confer an original authority for the act ratified; so where the contract made by the agent was one which the law requires to be in writing, the ratification of the agent's act must also be in writing.

Civil Code, Section 2310.

Section 204.—HOW AGENCY IS CREATED.—An agency may be created by authority given before the act done, and its creation will be presumed from a subsequent ratification. The authority conferred upon an agent may be verbal, and it will be sufficient for any purpose, except that an authority to enter into a contract required by law to be in writing can only be given by an instrument in writing.

Civil Code, Sections 2307, 2309.

Section 205.—MUTUAL OBLIGATIONS OF PRINCIPAL AND THIRD PERSONS.—An agent represents his principal for all purposes within the scope of his actual or ostensible authority, and all the rights and liabilities which would accrue to the agent from transactions within such limit, if they had been entered into on his own account, accrue to the principal. And the principal is liable, even if the agent exceeds his instructions, where the party with whom he deals is not aware of it. In either case, the question of the authority of the agent must depend, so far as it involves the rights of innocent third persons who have relied thereon, upon the character bestowed, and not upon the instruction given. Or, in other words, the principal is bound to third persons who have relied thereon in

good faith, and in ignorance of any limitations or restrictions, by the apparent authority he has given to the agent, and not by the actual or express authority, where that differs from the apparent; and this, too, whether the agency be a general or special one.

As against a principal, both principal and agent are deemed to have notice of whatever either has notice of, and ought in good faith and the exercise of ordinary care and diligence to communicate to the other. Notice to the agent of a corporation is notice to the corporation itself.

An instrument within the scope of his authority, by which an agent intends to bind his principal, does bind him, if such intent is plainly inferable from the instrument itself.

A principal is responsible to third persons for the negligence of his agent in the transaction of the business of the agency, including wrongful acts committed by such agent as a part of the transaction of such business, and for the agent's wilful omission to fulfill the obligations of the principal.

Sometimes a person deals with a man without knowing or having reason to believe that he is not acting for himself, but is really only the agent for another. In such cases, where the fact is afterwards disclosed that another is the principal, and the principal makes a claim arising out of the contract, the party who dealt with the agent may set off against the principal all claims which he might have set off against the agent before receiving notice that he was an agent.

An undisclosed principal will be liable when he becomes known, upon a contract made by the agent in his own name. Where a party sells goods to one who afterwards turns out to have been the agent of another, and the principal receives the benefit of the transactions, the principal will be held responsible for the goods furnished the agent. But the statute of this state provides, that if exclusive credit is given to an agent by the person dealing with him, his principal is exonerated by payment

made to the agent in good faith, before receiving notice of the creditor's election to hold the principal responsible.

Civil Code, Sections 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338.

Section 206.—OBLIGATIONS OF AGENTS TO THIRD PERSONS.—One who assumes to act as an agent thereby warrants to all who deal with him in that capacity, that he has the authority which he assumes. And if one acts as an agent, without authority, the party injured may sue him for the breach of the warranty and recover his losses.

If, with the agent's consent, credit is given to him personally in a transaction, he will be responsible as a principal to third persons. He will also be personally responsible, whenever he enters into a contract in the name of his principal, without believing, in good faith, that he has authority to do so. He will also be responsible when his acts are wrongful in their nature. If an agent receives anything for the benefit of his principal, to the possession of which another person is entitled, he must, on demand, surrender it to such person, or so much of it as he has under his control at the time of the demand, on being indemnified for any advances which he has made to his principal, in good faith, on account of the same; and he is responsible therefor, if, after notice from the owner, he delivers it to his principal.

Civil Code, Sections 2342, 2343, 2344.

Section 207.—AGENT'S DELEGATION OF HIS POWER.—An agent, unless specially forbidden by his principal to do so, can delegate his power to another person in any of the following cases, and in no others: (1) When the act to be done is purely mechanical; (2) when it is such as the agent cannot himself, and the sub-agent can, lawfully perform; (3) when it is the usage of the place to delegate such powers; or, (4) when such delegation is specially authorized by the principal.

A sub-agent represents the principal in like manner with the original agent; and the original agent is not

responsible to third persons for the acts of the sub-agent. Of course, if the agent should without lawful authority appoint a sub-agent, he would be responsible to third persons for such sub-agent's acts.

Civil Code, Sections 2349, 2351.

Section 208.—TERMINATION OF AGENCY.—An agency is terminated, as to every person having notice, by the expiration of its term. It is also terminated by the extinction of its subject, as where an agent to sell certain goods disposes of all of them, or where the subject of the agency is lost or destroyed so that nothing more can be done about it. It is also terminated by the death of the agent. It is also terminated by the agent's renunciation of the agency. It is also terminated by the incapacity of the agent to act as such, as where the agent becomes insane, or from some other cause it becomes impossible for the agent to perform his duties. It is also terminated when revoked by the principal, or by the principal's death, or by the principal's incapacity to act; but there is an exception to the rule that an agency is thus terminated because of the revocation by death or incapacity of the principal, in cases where the agent has acquired from his principal an interest in the thing which is the subject of the agency; for such an interest may survive all of these events, and be binding upon the principal's heirs, administrators, and executors, so as to continue the agency in existence. The interest which will keep alive the agency, under such conditions, must not be a mere lien for compensation or commissions, but must be an interest in the property or other subject of the agency.

Civil Code, Section 2355, 2356.

## WHOLESALE AGENTS

Section 209.—TRAVELING AGENTS.—In modern business enterprise the employment of traveling agents by wholesale houses is adopted as one of the necessary means of obtaining or keeping trade. The same ordinary



rules which apply to the agents of other men apply to the agents employed by wholesalers, except when varied by custom or usage in a particular business or locality.

Section 210.—**SALE BY SAMPLE.**—The agent of a wholesaler who carries samples with him, when he exhibits the samples to the customer, and solicits his order for the goods, warrants that the bulk will be equal to that of the sample. This is absolutely necessary as a rule of law, as well as the custom among merchants.

Section 211.—**PURCHASER'S RIGHT TO RETURN GOODS.** The purchaser of goods sold by sample has a right to make reasonable inspection of the goods, and if the bulk is not equal to the sample, he may repudiate the sale and return the goods. But his inspection and objection must be reasonable. If he keeps the goods, unpacked and unopened, for a long time after he receives them, his inspection will not be reasonable; and if, after inspection, he uses a part of the goods himself, or disposes of a part to others, or delays in sending them back to the wholesaler, his right to avoid liability for the purchase price will be lost. He must act promptly in inspecting the goods, and must with equal promptness return them, if he does not wish to be held for them.

Section 212.—**COLLECTIONS BY TRAVELING AGENT.**—A commercial traveler who makes collections for his house cannot, without special authority from the house, accept anything but money from the debtor.

Section 213.—**GIVING CREDIT.**—A commercial traveler may sell goods on credit, where that is the usage or custom of the place or business; and when a customer buys on credit from a wholesaler's agent, in accordance with a usage between them of long standing, and without notice of any change in the wholesaler's terms, the latter will be bound, even if he has instructed his agent to give no more credit.



Section 214.—DECLARATIONS OF WHOLESALER'S AGENT. When a commercial traveler approaches a customer, with or without samples of his principal's goods, he stands in the place of the principal and acts for and in his behalf. As the principal's own declarations would bind him, if he were present, so the agent's declarations within the scope of his authority, made at the time of the sale, and relating to the goods, will be binding upon the principal. So, whatever the agent of a wholesaler who is sent out to sell the goods of his principal states, as to the quantity, or quality, or condition, or price, or the time and manner of shipment, or any other fact which is material to or an inducement for the sale, it will bind the principal as though he had made the representations in person.

Section 215.—NOTICE TO WHOLESALER'S AGENT.—Notice of a fact given to the agent is notice to the wholesaler. Therefore, if the purchaser gives notice to the agent of any fact with respect to the contract or the goods it is notice to the wholesaler himself, and he will be bound by it.

Section 216.—FAILURE TO SHIP GOODS.—When a commercial agent solicits and receives an order for goods, and neglects to send the order to his house, or the principal refuses to honor the order, after accepting it, the wholesaler will be liable to the customer for all damages sustained by him, if the goods were ordered in good faith.

Section 217.—NOTICE BY WHOLESALER OF TERMINATION OF AGENCY.—A wholesaler must give notice to his customers of the termination of an agent's authority, or he will be bound by the agent's contracts with persons from whom he has formerly solicited orders, even if made after the agent's authority has actually ceased. Where a wholesaler dismisses an agent from his employ, and revokes his authority to sell or buy, he must give notice to third parties with whom the agent has dealings; and if he does not give notice to third parties of his revocation of the

agent's authority, or unless he does what he can to make the revocation as notorious and generally known to the world as was the fact of the agency, he will be bound by the further dealings of the agent with persons who have not received notice of the agent's dismissal. As to the method of giving notice that an agent's authority has been revoked, or as to the character of notice required, the law does not prescribe any particular form of notice or method of giving it. Much will depend, in this matter, upon the prevailing custom or usage. Sometimes the notice is given by publishing in a newspaper, but more often by circular letter mailed to each of the wholesaler's customers. The latter method is to be preferred; for the wholesaler's books will usually show the names and addresses of all persons with whom the agent has had dealings, and a notice by mail may more surely reach the person intended to be notified of the revocation of an agent's authority. But whatever may be the method pursued, it must not be forgotten that actual notice of an agent's dismissal is necessary to protect his former principal from being bound by the agent's further dealing with persons with whom he formerly dealt.

Section 218.—WHOLESALE'S REPUDIATION OF AGENCY. Circumstances occur where the wholesaler will dispute the agency altogether, and seek to repudiate the acts of one who has assumed to represent him in a transaction. In such cases, if the wholesaler does anything himself to ratify the act of the assumed agent, or accepts the result of his services, or acknowledges in any way his capacity as agent for himself, he will be bound, and his effort to repudiate the transaction will be of no avail. A repudiation of the act of one who assumes to act as agent, and whose agency is disputed, must be made promptly, as soon as the wholesaler learns of the pretended agency, and must be decisive and unequivocal. There was a case in Colusa County, which was passed upon by the Supreme Court of California in 1896, which illustrates very well

the conduct which will bind a wholesaler, and what will not be considered a repudiation of an assumed agent's authority. A man named Willis, who represented himself as the agent of J. K. Armsby Co., San Francisco, made a contract with J. H. Pope, of Colusa County, for the purchase of a lot of green fruit. The contract was in writing and was signed, "J. K. Armsby Company. By Frank Willis, Agent." Subsequently, and before the delivery of any fruit under the contract, Pope wrote to the J. K. Armsby Co. this letter: "Colusa, Cal., May 25, 1894. J. K. Armsby Co., San Francisco—Gentlemen: I have sold my green fruit to you, and have a contract signed to that effect, signed, 'J. K. Armsby Company,' by Frank Willis, as agent. Now, what I want to know, is F. W. Willis your agent for buying green fruit, and is the contract correct? Your immediate answer and oblige. Yours truly, J. H. Pope." On the next day Pope received from the general manager of the company this letter: "San Francisco, May 26, 1894. John H. Pope, Esq., Colusa, Cal.—Dear Sir: We have yours of the 25th. Mr. Willis bought some apricots on our advice, but we are not aware he bought them in our name. We will handle them, however, and think there is no question on the money part of the transaction. The writer expects to visit your section within the next week or two, and will arrange the matter satisfactorily with you then. Yours truly, J. K. Armsby Co. Freeman." Afterwards a dispute arose, and the J. K. Armsby Company denied that Willis was their agent for buying the fruit, and claimed to have repudiated his agency. But the Supreme Court reviewed the facts, and said that the letter from the company was not frank, and did not answer the question put by Pope, whether Willis was the company's agent in the premises, by saying, in terms, whether he was or was not such agent; that the language used in the letter, and the assurances conveyed by it, authorized but one inference, that the contract was all right and the company would see it carried out. And the Supreme Court further said, that if the

company intended to repudiate the transaction, it was its duty to do so explicitly, and in such terms as to leave no room for doubt; and that Pope had a right to infer from the language of the letter that the contract made by Willis, instead of being repudiated, was in fact ratified by the J. K. Armsby Company; and that the company was positively and plainly informed by Pope's letter that he had a written contract signed in its name, and it was clearly the duty of the company, if it did not know the terms of the contract, to inform itself, before writing as it did, if it did not wish to be bound by the contract. It would have been a very easy thing to have asked Pope to send a copy of the contract, before replying to his letter; and not to have taken this simple precaution was negligence on the company's part, and precluded it from denying the effect of its assurances to Pope, which induced the latter to proceed and deliver his fruit under what he had a right to suppose was a valid contract. The case just referred to, like a great many others of like character, exemplifies the rule that an attempted repudiation of agency, or the contract of an agent made in the name of the principal, must be unequivocal and plain and clear, and must leave no room for a contrary inference on the part of the person with whom the agent deals. (Decided by the Supreme Court of California in the case of Pope vs. Armsby Co., reported in Volume 111, California Reports, page 159.)

Section 219.—SALE OF SAMPLES.—A traveling salesman has no implied authority from the nature of his employment to sell the samples with which he is intrusted by his principal. Samples being essential and necessary to the performance of the salesman's work, no reasonable inference can arise that he is to dispose of them, for, if he does, he is left without available means for exhibiting the goods of his employer. A traveling salesman cannot sell his samples without express authority and instructions from his employer.



## MANUFACTURER'S AGENT

Section 220.—MANUFACTURER'S AGENT TO BUY OR SELL. The law which applies generally to agents is also applicable to agents for manufacturers, whether such agents have the authority to buy raw material or to sell the finished product to the retailer. The agent for the manufacturer has such authority as his principal gives him, or such as may be reasonably inferred from a course of dealings with customers of which the manufacturer has knowledge and retains the benefits.

Section 221.—AGENT'S AUTHORITY TO BORROW MONEY. Where a manufacturer establishes an agency in a city other than the place where the factory or main office is located, the question sometimes arises as to what conditions or circumstances, if any, will justify the agent in borrowing money on his principal's account. The authority of an agent to borrow money for his principal may be expressly given, or it may be impliedly conferred upon him as an incident to the business which he undertakes to transact for his principal. When the power to borrow money is expressly given to an agent, the existence and extent of the power are, of course, to be determined by a construction of the instrument by which it is given. Where a general power to borrow money is expressly given, such power includes authority to give the lender the ordinary securities for the sum borrowed, such as bonds, notes, or collaterals. The power of an agent to borrow money on his principal's account may be implied, when the carrying on of the business intrusted to him absolutely requires the exercise of such power. An agent is presumed to have the power to do whatever is necessary to effect the purposes of his agency. The necessity for borrowing money must, however, be shown, before the power to borrow can be inferred from the original employment of the agent. To justify this inference, the borrowing must be practically indispensable, and it is not



sufficient that it was convenient, or advantageous, or more effectual for the transaction of the business provided for. Nor is a party dealing with an agent entitled to assume the existence of any extraordinary state of facts, in order to bring the act of the agent within the scope of his apparent authority. Where it is absolutely necessary, in order to carry on the business with which the agent is intrusted, that he should borrow money on the credit of his principal, the authority to borrow will be implied. But a power given to an agent to draw or indorse checks, for and in the name of his principal, gives him no authority to overdraw his principal's account at the bank. Where the act of an agent, in borrowing money for his principal, was without original authority, the principal's ratification of the act cannot be inferred from the mere fact that the money borrowed went into the business of the principal or was beneficial or advantageous to him. But where an agent without original authority borrows money on behalf of his principal, and uses it in a manner advantageous to the principal, the ratification of the agent's act may be inferred from the silence of the principal after knowledge of all the facts, or from his promise to repay the money so borrowed.

Section 222.—AGENT SELLING GOODS OUT OF MANUFACTURE.—An agent authorized to sell new-pattern goods, to be manufactured, in addition to those the principal has already manufactured, or is willing to manufacture, has no authority to sell old-pattern goods, which have ceased to be manufactured, and could not be manufactured except at a loss. The very sending of an agent out to sell carries with it the idea that he is expected by the manufacturer to sell to his advantage; and this being so, it cannot be said that because he is expressly authorized to sell manufactured goods, he is also authorized to sell those that have ceased to be manufactured, and could not be except at a loss. An agent who has authority to sell new-pattern goods, to be manufactured, cannot be said

to have authority to sell what is not being manufactured and will not be by his principal, because to manufacture it would result in a loss, which is not the prevalent idea in any business. A reasonable man would not believe that a manufacturer would carry out such contract, or that he intended to authorize his agent to make it.

Section 223.—SELLING GOODS FOR ONE YEAR MADE IN ANOTHER.—The mere fact that one acts as agent of a manufacturer in one year, in the sale of goods manufactured for sale for that year, does not make him an ostensible agent for the sale of the goods for the next year, unless such goods are continued to be manufactured or are in stock, and the principal wishes to sell them.

Section 224.—LIMITATION OF AUTHORITY.—A letter from a manufacturing firm to a customer, to the effect that for the next year they had certain new patterns of goods, which they would be ready to submit to the inspection of the customer at the end of the month, and that “our Mr. W. will call on you early in January, and talk to you about handling the line for next year,” only authorized the agent to sell the new patterns of goods which were in the process of manufacture, or were offered to be manufactured, and the customer could not recover damages for the failure of the manufacturer to deliver old patterns of goods which the latter had ceased to manufacture.

Section 225.—SALE OF PROPERTY WHEN MANUFACTURED.—An agent authorized to sell the property of his principal when manufactured, has no authority to sell before it is manufactured.

## COMMISSION MERCHANTS

Section 226.—SELLING PROPERTY ON COMMISSION.—There is a common kind of agency exercised by commission merchants, who receive the property of others to sell on commission. But commission merchants, who usually

have possession of the property itself, and receive, not a salary, but a part of the selling price as their compensation, and usually receive few if any instructions from the consignor of property to be sold on commission, are to be considered from a peculiar point of view in many of their business relations.

Section 227.—INSURANCE OF CONSIGNED PROPERTY.—A commission merchant, unless he has received contrary instructions, has authority to insure property consigned to him uninsured.

Civil Code, Section 2368.

Section 228.—AUTHORITY TO SELL ON CREDIT.—Unless specially restricted to sales for cash, a commission merchant has authority to sell on credit any property intrusted to him for sale; but such authority does not extend to such things as it is customary to sell for cash. Therefore, even if he has not received any instructions to the contrary, a commission merchant will not have authority to sell on credit any commodity consigned to him for sale which it is the custom at the place where he does business to sell for cash.

Civil Code, Section 2368.

Section 229.—PLEDGE OF CONSIGNED PROPERTY.—A commission merchant has no power to pledge or mortgage property consigned to him, and cannot trade the consigned property for other property.

Civil Code, Section 2368.

Section 230.—AUTHORITY OF PARTNER OR SERVANT.—The partner or servant of a commission merchant may have the same authority to deal with the consigned property as he has, but he cannot delegate his authority to any person in an independent employment.

Civil Code, Section 2368.

Section 231.—INSTRUCTIONS FROM CONSIGNOR.—If a consignment of property is received by a commission merchant, and the consignor at the same time sends certain instructions for him to follow, regarding any matter connected with the sale, it is the duty of the merchant to follow such instructions if possible, notwithstanding any advances he may have made to his principal upon the property consigned to him. But if he has an opportunity to sell at the market price, and the consignor forbids him to do so, he need not follow such instructions, unless his advances are repaid him; and if his advances are not repaid him, he may proceed to sell for his own reimbursement, after giving to the consignor reasonable notice of his intention to do so, and of the time and place of sale.

Civil Code, Section 2027.

Section 232.—CANNOT EXTEND CREDIT.—When property is sold by a commission merchant on credit, the sale must be made on such credit as is usual, but he has no power to extend the credit agreed upon.

Civil Code, Section 2028.

Section 233.—GUARANTY OF CERTAIN PRICE.—Where the commission merchant guarantees that the goods shall yield to the consignor a fixed price, he cannot by selling for less, or by deducting his commission, avoid his liability to make his returns to the consignor amount to the price agreed upon. The value of the goods, as it turns out to be, is not material. He has fixed his own liability, and his guaranty of a certain price, and his liability to the consignor for so much, becomes absolute whenever he makes a sale, whether for cash or upon credit.

Section 234.—INSTRUCTIONS TO “SELL ON ARRIVAL.”—Where a consignment of property is made to a commission merchant, with instructions to “sell on arrival,” the merchant is bound to follow the instructions and sell for



the price the property will command, and if he does not do so, but holds the property and neglects to sell on arrival, he will be liable for any losses sustained by the consignor occasioned by a fall in price. He cannot excuse himself by saying that the market was dull, for he had received his instructions, and it was his duty to sell, if the property might have been disposed of even at a reduced price. It was his duty to sell on arrival, no matter at what loss.

Section 235.—SPECIAL PROPERTY IN CONSIGNMENTS.—A commission merchant to whom goods have been consigned for sale, has a special property in the goods, by virtue of his position with relation to them. For many, if not for most purposes, he is treated as the owner of the goods. He has possession; he may sell and make shipments; he may collect the purchase price; and, in fact, he may deal with the property as though it were his own, in the absence of explicit instructions limiting his authority. And it follows, necessarily, that any limitation upon his general authority must be brought to the notice of those with whom he deals, or his principal will be bound, even though he should go outside his instructions.

Section 236.—IN WHOSE NAME INSURANCE MAY BE PUT.—Insurance on property, consigned to a commission merchant for sale, may be for the benefit and in the names of both merchant and consignor. The merchant is not bound to insure, unless he has received orders to do so; but he may insure, in his own name, or in the name and for the benefit of his principal.

Section 237.—RESPONSIBILITY OF PURCHASER.—It is the duty of a commission merchant who sells on credit to make strict inquiry as to the responsibility of the purchaser; and if he neglects to do so, and a loss occurs, he will be liable for it to his principal.



Section 238.—RIGHT TO COMMISSIONS.—If a commission merchant properly performs his duties, he will always be entitled to his commission in such sum as has been agreed upon between himself and principal; and if there has been no agreement as to the amount of the commission, then for a reasonable amount, which may depend upon usage or custom. But if the merchant be guilty of gross misconduct, or if he perform his duties in such a negligent manner as to prevent any benefit to the principal, he will not be entitled to receive his commission. If expenses are occasioned by his own negligence, he cannot recover them; and he will not be entitled to the difference, when through his own negligence the proceeds of the sale are not equal to the expenses.

Section 239.—MAY SELL IN HIS OWN NAME.—Having a special property in goods consigned to his care, a commission merchant may sell in his own name; and when the purchaser pays him, the former is discharged from all liability to the real owner of the goods. Whenever the commission merchant sells in his own name, he may sue the purchaser in his own name for the price.

Section 240.—TAKING PROMISSORY NOTE IN PAYMENT.—When it is proper for a commission merchant to sell on credit, and he takes the promissory note of the purchaser in payment, payable to himself, he takes it in trust for his principal, and subject to his order.

Section 241.—LIEN OF COMMISSION MERCHANT.—Having possession of the goods, and a special property in them, the commission merchant has a lien upon them and their proceeds, and the securities received upon their sale, for his expenses and commissions, for his advances to his principal, and usually for the balance of his general account with his principal.

Section 242.—AUTHORITY AS GENERAL AGENT.—Where general authority is given to a commission merchant to buy and sell for the principal, he is considered as a general agent, and his acts will be binding on his principal, even where he has violated his private instructions.

Section 243.—CARE TO BE TAKEN OF GOODS CONSIGNED. A commission merchant is bound to keep the goods intrusted to him with the same care as a prudent man would bestow upon them, if they were his own. He must use ordinary diligence in the care and preservation of the property while it is in his hands; and for any loss occasioned by his neglect of his duty in this respect he will be personally liable to his principal.

Section 244.—MUST NOT MIX GOODS WITH ANOTHER'S. A commission merchant has no right to mix the goods received from one person with the goods of another.

Section 245.—DUTY TO RENDER ACCOUNTS.—A commission merchant is bound to give the unbiased use of his own discretion and judgment to his principal, and he must keep and render to his principal true accounts of his transactions, and he must keep the principal informed of all facts material to his interests; and if losses occur through neglect of these duties, he will become personally responsible to the principal.

The Legislature passed a law providing that "every commission merchant, broker, agent, factor, or consignee, who shall wilfully and corruptly make, or cause to be made to the principal or consignor, a false statement as to the price obtained for any property consigned or entrusted for sale, or as to the quality or quantity of any property so consigned, or entrusted, or as to any expenditures made in connection therewith, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by fine not exceeding five hundred dollars and not less than two hundred dollars, or by imprison-

ment in the county jail not exceeding six months and not less than ten days, or by both such fine and imprisonment.

Act of the Legislature, approved March 20, 1909.

Another law was passed relating to the duty of a commission merchant to render an account to the consignor, as follows:

“It is hereby made the duty of every commission merchant, broker, factor, or consignee, to whom any property is consigned or entrusted for sale, to make, when accounting therefor or subsequently, upon the written demand of his principal or consignor, a true written statement setting forth the name and address of the person or persons to whom a sale of the said property, or any portion thereof, was made, the quantity so sold to each purchaser, and the respective prices obtained therefor; provided, however, that unless separate written demand shall be made as to each consignment or shipment regarding which said statement is desired, prior to sale, it shall be sufficient to set forth in said statement only so many of said matters above enumerated as said commission merchant, broker, factor, or consignee may be able to obtain from the books of account kept by him; and that said statement shall not be required in case of cash sales where the amount of the transaction is less than fifty dollars. Any person violating the provisions of this section is guilty of a misdemeanor.”

Act of the Legislature, approved April 22, 1909.

### REAL ESTATE AGENTS

Section 246.—EMPLOYMENT MUST BE IN WRITING.—The employment of a real estate agent, giving him authority to sell land for another, is required by the law of this state to be in writing. The contract or some memorandum of it must be in writing. The contract or memorandum need not state that the agent is to receive a commission for his service, but it must show in writing that the agent was employed.

Civil Code, Section 1624.

Section 247.—**VERBAL CONTRACT INVALID.**—A verbal contract for the sale of real property, made by an agent who has no written authority from another, is invalid. And if the agent without authority in writing allows an intending purchaser to take possession of the property, such possession will only be held at the will of the owner, who can bring an action for unlawful detainer against the party in possession. Verbal authority given by one to another, to contract with reference to his land, is in law no authority. (Decided by the Supreme Court of California in the case of *Nason vs. Lingle*, which decision is printed in Volume 27, California Decisions, page 970.)

Section 248.—**WHEN LETTER NOT SUFFICIENT.**—A letter from the owner of real estate is not sufficient to enable the agent to recover a commission, unless it is clearly seen that an employment was intended, from the language used in the letter itself. A real estate agent in Oakland received a letter which read as follows: "Walter E. Logan: Sir—If you can purchase N. W. corner of 13th and Franklin streets, 75x100, for \$42,000, I think we would be ready to purchase same by Monday next. J. C. McMullen." Logan sued for a commission, producing the above letter as evidence of his employment in writing. The District Court of Appeals decided that the letter was not sufficient memorandum of employment, under the law. The Court says that it does not purport to be an employment of the plaintiff as a broker or agent for the purchase of the real estate, but is rather to be construed as merely a proposition to him to ascertain whether it could be purchased at the designated price. But whatever construction is to be given to its terms, inasmuch as the plaintiff did not purchase the property, or obtain from the owner an agreement for its sale which could be enforced by the defendant, the latter did not become liable to him for any service as broker or agent in the matter. It was his duty to procure from the owners and deliver to the defendant a valid contract of sale which could be



Section 249, page 269, "Business Law for Business Men"—NEW PROVISIONS OF LICENSE LAW—On page 279, after sub-division (v), add new sub-divisions as follows:

(w) BROKER'S SIGN—Each individual, firm or corporation licensed as a broker under the provisions of this act shall erect or maintain a sign on the premises wherein is located his place of business, on which shall be plainly stated that he is a real estate broker.

(x) FARM ACREAGE SUB-DIVISIONS—The state real estate commissioner, upon his own initiative or upon written application of the owner of any agricultural lands being offered for sale or proposed to be offered for sale for colonization purposes or for farm acreage subdivision or for rural settlement, shall have authority to investigate and make public report upon said colonization or farm acreage subdivision or rural settlement enterprise, with reference to the condition of title to said lands and the methods of sale being used or proposed to be used in effecting the sale thereof and, in case said land is represented to have a water supply or to be sold with a water right, the truthfulness of such representation.

It shall be unlawful for any person, copartnership, or corporation to issue, circulate or publish any advertisement, pamphlet or circular concerning any agricultural lands being offered for sale or proposed to be offered for sale for colonization purposes or for farm acreage subdivision or for rural settlement wherein it is stated that the real estate commissioner has made a report on such enterprise unless the substance of said report shall be clearly set forth in said advertisement, pamphlet or circular. Any person or corporation violating the provisions of this section shall upon conviction thereof, if a person, be punished by a fine not to exceed two thousand dollars or by imprisonment in the county jail or state prison for a term not to exceed one year, or by both fine and imprisonment, in the discretion of the court; or if a corporation, be punished by a fine of not to exceed five thousand dollars.

Act of the Legislature of California, approved June 3, 1921; in effect August 3, 1921.



enforced by the defendant; or, if he could obtain from the owners a verbal agreement to make the sale, he should have brought the owners and the defendant together, thus giving the latter an opportunity to secure a written contract. The letter alone was not sufficient to show an employment of the agent, or to give him any right to commissions. (Decided by the District Court of Appeals, First District, in the case of Logan vs. McMullen, which decision is printed in Volume 87 of the Pacific Reporter, page 285.)

Section 249.—LICENSE OF REAL ESTATE BROKERS AND SALESMEN.—It shall be unlawful for any person, copartnership or corporation to engage in the business, or act in the capacity of a real estate broker, or a real estate salesman, within this state without first obtaining a license therefor.

(a) *Real Estate Broker*.—A real estate broker within the meaning of this act is a person, copartnership or corporation who, for a compensation, sells, or offers for sale, buys, or offers to buy, or negotiates the purchase or sale or exchange of real estate, or who, for compensation, negotiates loans on real estate, leases, or offers to lease, rents, or places for rent, or collects rent from real estate, or improvements thereon, for others as a whole or partial vocation.

(b) *Real Estate Salesman*.—A real estate salesman within the meaning of this act is one who for a compensation is employed by a licensed broker to sell, or offer for sale, or to buy, or to offer to buy, or to negotiate the purchase or sale or exchange of real estate, or to negotiate a loan on real estate, or to lease, or offer to lease, rent, or place for rent, any real estate, or improvements thereon, as a whole or partial vocation.

(c) *Application of Act*.—The provisions of this act shall not apply to any person, copartnership or corporation who shall perform any of the acts aforesaid with reference to property owned by such person, copartner-

ship or corporation; nor shall the provisions of this act apply to persons holding a duly executed power of attorney from the owner, nor shall this act be construed to include in any way the services rendered by an attorney at law in performing his duties as such attorney at law; nor shall it be held to include any receiver, trustee in bankruptcy, or any person acting under order of any court, nor to a trustee selling under a deed of trust.

(d) *Act Constituting Person a Broker.*—One act, for a compensation, of buying or selling real estate of or for another, or offering for another to buy or sell or exchange real estate, or negotiating a loan on or leasing or renting or placing for rent real estate, or collecting rent therefrom shall constitute the person, copartnership or corporation making such offer, sale or purchase, exchange or lease, or negotiating said loan, or so renting or placing for rent or collecting said rent a real estate broker within the meaning of this act.

(e) *State Real Estate Department.*—There is hereby created a state real estate department. The chief officer of such department shall be the real estate commissioner. He shall be appointed by the governor and hold office at the pleasure of the governor. He shall receive an annual salary of five thousand dollars, to be paid monthly out of the state treasury upon a warrant of the controller. He shall within fifteen days from the time of notice of his appointment take and subscribe to the constitutional oath of office, and file the same in the office of the secretary of state and execute to the people of the State of California a bond in the penal sum of ten thousand dollars executed by two or more sureties, or by a surety company duly authorized to do business in this state, to be approved by the governor of the state, for the faithful discharge of the duties of his office. The real estate commissioner shall have full power to regulate and control the issuance and revocation, both temporary and permanent, of the licenses to be issued under the provisions of this act, and to perform all other acts and duties provided in this act



and necessary for its enforcement. The real estate commissioner shall employ such deputies, clerks and assistants as he may need to discharge in proper manner the duties imposed upon him by law. Neither the real estate commissioner, nor any of his deputies, clerks or assistants, shall be interested in any real estate company or real estate broker as director, stockholder, officer, member, agent or employee. Such deputies, clerks and assistants shall perform such duties as the real estate commissioner shall assign to them. The real estate commissioner shall fix the compensation of such deputies, clerks and assistants, which compensation shall be paid monthly on a certificate of the real estate commissioner and on the warrant of the controller out of the state treasury. Each deputy shall, after his appointment, take and subscribe to the constitutional oath of office and file the same in the office of the secretary of state.

The real estate commissioner shall have his principal office in the city of Sacramento, and may establish branch offices in the city and county of San Francisco, and in the city of Los Angeles.

(f) *Limitations on License.*—No real estate license shall give authority to any person, copartnership or corporation other than those to whom said license is issued; *provided, however*, that when a license is issued to a corporation, the officers thereof, other than the president, shall be required to obtain a license if engaged in the real estate business as a whole or partial vocation; *and provided, further*, that when a license is granted to a copartnership the members of said copartnership shall each be required to obtain a separate license, except as provided hereafter.

(g) *Applications for License.*—Application for license as real estate broker shall be made in writing to the real estate commissioner, which application shall be accompanied by the recommendation of two real estate owners of the county in which said applicant resides or has his place of business, certifying that the applicant is honest,

truthful and of good reputation, and recommending that a license be granted the applicant. If the applicant shall have resided, or shall have engaged in business for less than one year in the county from which the application is made, the same shall also be accompanied by the recommendation of two real estate owners of each of the counties where he has formerly resided or engaged in business during said period of one year prior to the filing of said application, certifying that the applicant is honest, truthful and of good reputation and recommending that a license be granted the applicant. Where the applicant for a real estate broker's license maintains more than one place of business within the state he shall be required to apply for and procure a duplicate license for each branch office so maintained by him. Such duplicate license shall be issued without additional charge. Every such application shall state the name of the person, copartnership or corporation, and the location of the place or places of business for which such license is desired.

(h) *Licenses for Salesmen.*—Application for license as real estate salesman shall be made in writing to the real estate commissioner, signed by the applicant, setting forth the period of time during which he has been engaged in the business, stating the name of his last employer and the name and place of business of the person, copartnership or corporation then employing him, or in whose employ he is to enter. The application shall be accompanied by the recommendation of his employer, if employed, certifying that the applicant is honest, truthful and of good reputation, and recommending that the license be granted to the applicant.

The real estate commissioner may require such other proof as he may deem advisable of the honesty, truthfulness and good reputation of any applicant for a license, or of the officers of any corporation, or of the members of any copartnership making such application before authorizing the issuance of a license.

(i) *License Fees.*—The fees for licenses shall be as follows:

(1) For a broker's license the annual fee shall be ten dollars. If the licensee be a corporation, the license issued to it shall entitle the president thereof to engage in the business of real estate broker within the meaning of this act. For officers other than the president of a licensed corporation, who shall engage in the business of real estate broker, within the meaning of this act, the annual fee shall be two dollars. If the licensee be a copartnership, the license issued to it shall entitle one member of said copartnership to engage in the business of real estate broker within the meaning of this act. For each other member of such copartnership who engages in the business of real estate broker within the meaning of this act the annual fee shall be two dollars.

(2) For a salesman's license the annual fee shall be two dollars.

(3) If application for a license is made during the period beginning on the first day of April and ending on the thirtieth day of June, in any year, three-fourths of the annual fee shall be paid; if application is made during the period beginning on the first day of July and ending on the thirtieth day of September, one-half of such annual fee; if application is made during the period beginning on the first day of October and ending on the thirty-first day of December, one-fourth of such annual fee.

(4) All applications for license shall be accompanied by the license fee as herein provided, and all licenses shall expire on December thirty-first of each year.

(j) *Display of Licenses in Offices.*—The licenses of both broker and salesman shall be prominently displayed in the office of the real estate broker, and no license issued hereunder shall authorize the licensee to do business except from the location stipulated in the license. Notice in writing shall be given the commissioner of change of business location or change of employer, whereupon the commissioner shall issue a new license for the unexpired

period without charge. The change of business location without notification to the commissioner and the issuance by him of a new license shall automatically cancel the license heretofore issued.

Each person, firm or corporation licensed as a broker under the provisions of this act shall be required to have and maintain a definite place of business in the State of California which shall serve as his office for the transaction of business.

(k) *Revocation of Licenses.*—The real estate commissioner may upon his own motion, and shall upon the verified complaint in writing of any person, investigate the actions of any person, copartnership or corporation engaged in the business or acting in the capacity of a real estate broker, or a real estate salesman, within this state, and shall have the power to temporarily suspend or permanently revoke licenses issued under the provisions of this act, at any time where the holder thereof is guilty of—

- (1) Making any substantial misrepresentation, or
- (2) Making any false promises of a character likely to influence, persuade or induce, or
- (3) A continued and flagrant course of misrepresentation or making of false promises through agents or salesmen, or
- (4) Acting for more than one party in a transaction without the knowledge or consent of all parties thereto, or
- (5) Any other conduct, whether of the same or a different character than hereinabove specified, which constitutes dishonest dealing.

(l) *Appeal from Revocation of License.*—Before suspending or revoking any license the said commissioner shall notify, in writing, the holder of such license of the charges against him and afford an opportunity to be heard in person or by counsel in reference thereto. The decision of the said commissioner in suspending or revoking any license under this act shall be subject to review; and any party aggrieved by such decision of the



commissioner may within ten days from the date of said decision appeal therefrom to the superior court of the State of California, in and for the county in which the person affected by such decision resides or has his place of business under the terms of this act, by serving upon the commissioner a notice of such appeal and a demand in writing for a certified transcript of all the papers on file in his office affecting or relating to such decision and all the evidence taken on the hearing and paying ten cents for each folio of the transcript and one dollar for the certification thereof. Thereupon the commissioner shall, within thirty days, make and certify such transcript, and the appellant shall, within five days after receiving the same, file the same and the notice of appeal with the clerk of said court. Upon the hearing of such appeal, the burden of proof shall lie upon the appellant, and the court shall receive and consider any pertinent evidence, whether oral or documentary, concerning the action of the commissioner from which the appeal is taken, but shall be limited to a consideration and determination of the question whether there has been an abuse of discretion on the part of the commissioner in making such decision.

The decision of the commissioner shall not take effect until ten days after its date, and if notice of appeal and demand for transcript are served upon the commissioner in accordance with the provisions of this law, then such stay shall remain in full force and effect until decision upon appeal by said superior court. But if said aggrieved party shall fail to perfect his appeal as herein provided, said stay shall automatically terminate.

(m) *Powers of Commissioner.*—The real estate commissioner shall have power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of books and papers. In any hearing in any part of the state the process issued by the commissioner shall extend to all parts of the state

and may be served by any person authorized to serve process of courts of record or by any person designated for the purpose by the commissioner. The person serving any such process shall receive such compensation as may be allowed by the commissioner, not to exceed the fees prescribed by law for similar service, and such fees shall be paid in the same manner as provided herein for the payment of the fees of witnesses. Each witness who shall appear by order of the commissioner shall receive for his attendance the same fees and mileage allowed by law to a witness in civil cases, which amount shall be paid by the party at whose request such witness is subpoenaed. When any witness who has not been required to attend at the request of any party shall be subpoenaed by the commissioner his fees and mileage shall be paid from the funds appropriated for the use of the said real estate department in the same manner as other expenses of said department are paid.

(n) *Powers of Superior Court.*—The superior court in and for the county in which any hearing may be held by the commissioner shall have the power to compel the attendance of witnesses, the giving of testimony and the production of books and papers as required by any subpoena issued by the commissioner. In case of the refusal of any witness to attend or testify or produce any papers required by such subpoena the commissioner may report to the superior court in and for the county in which the hearing is pending by petition, setting forth that due notice has been given of the time and place of attendance of said witness or the production of said papers, and that the witness has been summoned in the manner prescribed in this act, and that the witness has failed and refused to attend or produce the papers required by subpoena before the commissioner in the cause or proceeding named in the subpoena, or has refused to answer questions propounded to him in the course of such hearing, and ask an order of said court compelling the

witness to attend and testify or produce said papers before the commissioner. The court upon petition of the commissioner shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than ten days from the date of the order, and then and there show cause why he has not attended or testified or produced said papers before the commissioner. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the commissioner, the court shall thereupon enter an order that said witness appear before the commissioner at the time and place fixed in said order and testify or produce the required papers, and upon failure to obey said order, said witness shall be dealt with as for contempt of court.

(o) *Taking of Depositions.*—The commissioner may in any hearing before him cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the superior courts of this state, and to that end may compel the attendance of witnesses and the production of books and papers.

(p) *Right to Attendance of Witnesses.*—Any party to any hearing before the commissioner shall have the right to the attendance of witnesses in his behalf at such hearing or upon deposition as set forth in this section upon making request therefor to the commissioner and designating the person or persons sought to be subpoenaed.

(q) *When Salesman Is Discharged.*—When any salesman shall be discharged by his employer for a violation of any of the provisions of section twelve hereof, a written statement of the facts in reference thereto shall be filed forthwith with the real estate commissioner by the employer.

(r) *Employer's License Not Affected by Employee's Violation.*—No violation of any of the provisions of this

act on the part of any salesman or employee of any licensed broker in this state shall cause the revocation or suspension of the license of the employer of said salesman or employee unless it shall appear upon a hearing to be had by the commissioner that said employer had guilty knowledge of such violation.

(s) *Prosecution of Violations.*—The real estate commissioner may prefer a complaint for violation of this act before any court of competent jurisdiction, and said commissioner and his counsel, deputies or assistants may assist in presenting the law or facts at the trial. It shall be the duty of the district attorney of each county in this state to prosecute all violations of the provision of this act in their respective counties in which such violations occur.

(t) *Penalty for Acting Without License.*—Any person or corporation acting as real estate broker or real estate salesman within the meaning of this act without a license as herein provided shall, upon conviction thereof, if a person, be punished by a fine of not to exceed two thousand dollars, or by imprisonment in the county jail or state prison for a term not to exceed two years, or by both such fine and imprisonment, in the discretion of the court; or if a corporation, be punished by a fine of not to exceed five thousand dollars.

(u) *No Commission to Unlicensed Persons.*—It shall be unlawful for any licensed broker to pay a commission for performing any of the acts herein specified to any person who is not a licensed broker, or a licensed salesman.

(v) *Party to Action Must Be Licensed.*—No person, copartnership or corporation engaged in the business or acting in the capacity of a real estate broker or a real estate salesman within this state shall bring or maintain any action in the courts of this state for the collection of compensation for the performance of any of the acts mentioned without alleging and proving that such person,



copartnership or corporation was a duly licensed real estate broker or real estate salesman at the time the alleged cause of action arose.

Act of the Legislature, approved May 27, 1919;  
in effect July 27, 1919.

Section 250.—FALSE ADVERTISEMENTS.—Any person, firm, corporation or association, or any employee or agent therefor, who in a newspaper, circular, circular or form letter or other publication published or circulated in any language in this state, makes or disseminates any statement or assertion of fact, concerning the extent, location, ownership, title or other characteristic, quality or attribute of any real estate located in this state or elsewhere, which is known to him to be untrue and which is made or disseminated with the intention of misleading, is guilty of a misdemeanor; *provided, however*, that nothing in this section shall be construed to hold the publisher of any newspaper, or any job printer, liable for any publication herein referred to unless such publisher or printer has an interest either as owner or agent, in such real estate so advertised.

Act of the Legislature of California, 1915; in  
effect August 8, 1915.

Section 251.—AUTHORITY OF AGENT TO MAKE A LEASE. The written authorization from the owner, to be sufficient to permit a real estate agent to enter into a binding contract of lease, must express within its terms the intention of the owner to confer upon the agent complete authority to do so. The mere employment by the owner of an agent to lease his property does not give the agent authority to make and execute a binding lease. The words "we hereby authorize you to negotiate a lease," do not authorize an agent to execute a lease in the name of the owner, but merely empowers him to procure a tenant for the property. (Decided by the Supreme Court of California in the case of *Salter vs. Ives*, which decision is printed in Vol. 155 of the Pacific Reporter, page 84.)

Section 252.—FORM OF WRITTEN AUTHORITY TO AGENT. The following is a form in writing authorizing an agent to sell land:

San Francisco, Cal., \_\_\_\_\_, 19\_\_\_\_\_.

In consideration of services to be performed by him, I hereby authorize and employ \_\_\_\_\_, of \_\_\_\_\_, State of California, to sell the following described real estate belonging to me, situate in the County of \_\_\_\_\_, State of California, to-wit:

(Here describe property.)

for the sum of \$\_\_\_\_\_.

This authority is for the term of \_\_\_\_\_ days from date, and shall be exclusive.

I agree to pay to said \_\_\_\_\_, as his commission for making a sale of said property, the sum of \_\_\_\_\_ per cent of the selling price.

Ten days to be given for examination of abstract of title, which I agree to furnish.

Time is of the essence of this instrument.

Owner.

Section 253.—RIGHT OF AGENT TO COMMISSIONS WHEN PROPERTY WITHDRAWN FROM SALE.—Where the contract of employment provides that if the owner shall before the expiration of the contract withdraw the property from sale the agent will be entitled to his commissions, the agent is entitled to recover his commissions as a debt due from the owner, upon his withdrawing the property from sale within the time named in the contract. The owner who withdraws the property from sale will be liable for the commissions, even though the agent has not found a purchaser for the property. For by his contract he gives the agent the opportunity to earn the commissions within a certain time; and if, during the term, he withdraws the property from sale, he thus deprives the agent of the benefit of the unexpired time, and may prevent his opportunity for making a sale.

Section 254.—WHEN CONTRACT FULFILLED AND COMMISSION EARNED.—A real estate agent is never entitled to commissions for unsuccessful efforts. When he undertakes to find a purchaser, the risk of failure is wholly his. The reward comes only with his success. That is the plain contract and contemplation of the parties. The agent may devote his time and labor and expend his money with ever so much devotion to the interest of his employer, and yet if he fails, if, without effecting an agreement or accomplishing a bargain, he abandons the effort, or if his authority is fairly and in good faith terminated, he gains no right to commissions. He loses the effort which was staked upon success, and in such event it matters not that after his failure and the termination of his agency, what he has done proves of use and benefit to the principal. But, on the other hand, if an agent authorized to negotiate a sale produces, within the time limited by his contract, a purchaser, ready, willing, and able to purchase upon the terms stated in the contract, his service is completed and he is entitled to his commissions. He is entitled to his commissions, notwithstanding the owner backs out, and refuses to sell to the purchaser produced.

Section 255.—WHAT IS SUFFICIENT AUTHORITY FROM CORPORATION.—Where an individual gives authority to a real estate agent to sell his land, any writing, in any form, whether memorandum, agreement, or letter, or telegram, which expresses on its face the employment of the agent to sell, is a sufficient authorization. But in the case of a corporation the law is entirely different. A corporation can only act by and through its officers, and a writing, though signed by its president, cashier, or secretary, or all three together, stating that a real estate agent had been employed to sell lands owned by the corporation, would not give any authority to the agent whatever. Corporations act by their officers, and the officers must transact their business in the manner provided by law,

and in no other way. Therefore, a corporation which has land to sell, and wishes to employ an agent to make the sale, can only act upon the matter through its Board of Directors, when duly assembled, by a resolution duly passed and recorded. There must be a quorum of the Directors present, and a majority of the Board must vote in favor of the resolution to employ the agent, and the "aye" and "no" vote must be entered in the minutes. The agent should then be furnished with a copy of the resolution, which will be a sufficient indication of his authority. When the by-laws of the corporation provide that notice to Directors of meetings of the Board be given in a certain manner, notice must be given strictly in accordance with the by-laws, or the resolution passed will not be valid. It will make no difference that all the Directors, without the formality of a meeting, sign their names to a written authorization to the agent. Such writing would be worthless. Under it the agent would have no legal authority to deal with the land. Under it, he could neither make a valid contract of sale, nor collect any commissions from the corporation for his services. The directors, the president, the secretary, the cashier, the stockholders, no one of these has power, by virtue of his office or investment, to employ an agent to buy or sell for the corporation, nor have all together the power which neither has separately. The powers of a corporation must be exercised, and its property controlled, by its board of directors; the decision of the majority of the directors, made when duly assembled, being valid as a corporate act. The board must be duly assembled, and their transactions should be recorded. The directors when not acting as a board have not the necessary power to employ an agent. The absence of a resolution of the board renders any writing purporting to employ the agent, though signed by the directors or other officers, illegal and invalid.

Civil Code, Section 305, 308, 377.



**Section 256.—RATIFICATION OF UNAUTHORIZED EMPLOYMENT BY CORPORATION.**—Where an agent acts for a corporation, without having received proper authorization by resolution of the board of directors, the corporation may yet ratify the act of the agent in making a sale; provided, the ratification must be in the same form and manner as the original authorization should have been, that is, it must be by a resolution of the Board lawfully adopted.

**Section 257.—OPTION TO AGENT TO SELL FOR COMMISSION ABOVE A FIXED PRICE.**—The owner of land may lawfully make a contract authorizing real estate agents to sell the land for a special sum and agreeing to pay them a commission of whatever sum they realize above that amount. Such a contract is binding upon both parties. It confers an option upon the agents, and a sale by the agents under such a contract is, as the law regards it, a sale made by them in the capacity of vendors upon their own account, and not strictly for the account of the owner of the land. If the agents find a purchaser, under such a contract with the owner, and receive a deposit to bind the bargain, but the sale does not go through because a title insurance company will not insure the title to the land, the owner has no claim on the deposit, and the agents have a right to refund the money to the intending purchaser. Such option to real estate agents, with relation, also, to a deposit received upon a purchase which afterwards failed to go through, was the subject of a Supreme Court decision in this state, in a San Francisco case. C. H. Robinson and C. B. Hobson executed to the real estate firm of Easton, Eldridge & Co. the following instrument: "We hereby authorize Easton & Eldridge, for us and within five days from date hereof, and until this authority is canceled in writing by us, to sell for the sum of \$10,000—net dollars—the following described property situated in the City and County of San Francisco, State of California, to-wit: All of block 935, outside lands; and

we will pay the said Easton & Eldridge a commission of all over said sum of \$10,000, net, for which they may sell said property with our consent. Witness our hand and seal this twenty-fourth day of August, A. D. 1887, C. B. Hobson, C. H. Robinson." The real estate firm found a purchaser, receiving from him \$1,050 as a deposit on the purchase price of \$10,500, with 30 days allowed for search of title, and upon the condition that the Title Insurance Company would insure the title. The Title Insurance Company refused to insure the title, and Easton & Eldridge repaid the deposit to the purchaser. Then Hobson and Robinson commenced a suit against the agents for the deposit, claiming that the money was received for their account, and that the agents had no right to pay it back to the purchaser. The Supreme Court decided the case in favor of Easton, Eldridge & Co., the decision of the Court stating, that the relation of the defendants to the plaintiffs was not that of a mere agent; that while their authority to sell the land was derived from the plaintiffs, yet the sale was to be made for their own account and benefit, as well as for that of their principals. By the terms of the authorization from their principals, Easton, Eldridge & Co. acquired such a right to a portion of the proceeds of sale as to enable them lawfully to make a contract of sale upon terms of their own choosing. The principals, in effect, said the Supreme Court, gave to Easton, Eldridge & Co. an option for five days to endeavor to sell the block of land for whatever sum they could obtain, and upon whatever terms they might make, provided they should receive therefor the sum of \$10,000, and agreed that the agents should have whatever sum they could realize above that amount. The relation thus created between them was rather that of a vendor and purchaser under a contract of sale than one of principal and agent, and a sale by the agents under such a contract was in the capacity of a vendor upon their own account, and not solely for the account of their principal. The agents were entitled to

all the proceeds of the sale in excess of \$10,000, and therefore they had the right to make the sale upon such terms as in their judgment would enable them to realize the highest price for the land. Upon a sale by them, the owners were entitled to the immediate payment of the \$10,000, but the agents could sell the land either for cash or upon time, as they might choose, so long as the owners received their money, and the terms of sale made by the agents did not require any ratification by the owners. And upon the disapproval of the title by the Title Insurance Company, the Supreme Court decided, the purchaser had the right to demand, and these agents had the right to refund, the money that had been received by them as a deposit upon the sale. (Decided by the Supreme Court of California, in the case of Robinson vs. Easton, Eldridge & Co., reported in Volume 93 of California Reports, page 80.)

Section 258.—FAILURE OF SALE BY DEFECTIVE TITLE. Where an agent is employed to sell land, the title to prove good or no sale, and he finds a purchaser, ready, able, and willing to buy upon the agreed terms, and the title proves to be defective, the agent is nevertheless entitled to his commissions. The failure of the sale by reason of the defective title is not the fault of the agent, but is the fault of the owner, and he must pay the agent's commissions. (Decided by the District Court of Appeals, in the case of Justy vs. Erro, which decision is printed in Volume 13, California Appellate Decisions, page 27.)

Section 259.—FAILURE OF OWNER TO REMOVE DEFECTS. Where real estate agents enter into a contract with an intending purchaser, acknowledging the receipt of a deposit, and stipulating that the title is to prove good or no sale, in which case the deposit is to be returned, and such contract is ratified by the owner of the land, even though not in the first place authorized, the owner is bound by it; and if it appears that there is a defect in the

title, it is the duty of the owner to remove the defect and perfect the title within the time limited by the contract, and if he does not do so, the purchaser will be discharged from his obligation, and will be entitled to the return of his money paid on deposit.

Section 260.—*EVASION OF CONTRACT BY OWNER.*—If, within the time limited in a contract for the sale of real estate on commission, the broker has produced a purchaser, who is ready, willing and able to purchase upon the terms prescribed, the principal cannot evade payment of the broker's commission by then refusing or neglecting to consummate the sale, or *by changing the terms*, or by selling the property to another, or by negligently dealing with the proposed purchaser so as to lose the benefit of the sale.

(a) *Refusal of Vendor's Wife to Join in Conveyance.* The refusal of the principal's wife to join in the conveyance will not avoid payment of the commission.

(b) *Refusal of Vendee to Purchase.*—The refusal of the purchaser to complete the sale on account of false representations made by the principal will not defeat payment of the commission.

(c) *Personal Conduct of Sale Unnecessary.*—It is not necessary that the broker should personally have conducted the negotiations between his principal and the purchaser leading to the sale, nor that he should have been present when the bargain was completed, or even that the principal should, at the time, have known that the purchaser was one found by the broker.

While it is indispensable, it is sufficient that the broker's efforts were the procuring cause of the sale; that through his agency, the purchaser was brought into communication with the seller, although the parties negotiated in person.

(Decided by the District Court of Appeals, in the case of *Justy vs. Erro*, which decision is printed in Volume 13, Californial Appellate Decisions, page 27.)



## Section 261—RATIFYING AUTHORITY OF BROKERS.—

The owner may ratify by his subsequent conduct the unauthorized act of the brokers in stipulating that the title shall be good or no sale. The action of the owner of the land in agreeing to the contract of his brokers with the intending purchaser, and in accepting him as the purchaser of the property upon the terms of such contract, is a waiver of objection that the brokers exceeded their authority in providing in the contract that the title should prove good, or that there would be no sale. And in this case it is not necessary that such ratification shall be in writing as between the owner of the land and the brokers, as it relates to no interest in the land, in so far as it affects the brokers, but only to the owner's obligation to pay them their commission when earned.

Section 262—WHAT IS GOOD TITLE.—A title to land, to be good, should be free from litigation, palpable defects, and grave doubts; and it should consist of both legal and equitable titles, and should be fairly ascertainable from the records. A perfect title is one that must be good and valid beyond all reasonable doubt. Whether the title in any particular case is good or not is a question which it is often difficult to determine, and one upon which lawyers and judges often disagree.

Section 263.—SALE BY OWNER.—A party who employs a real estate broker to sell his land may, notwithstanding, negotiate a sale himself; and if he does so without any agency of the broker, and before the latter has procured a purchaser, he is not liable to the agent for commissions. But, as already stated, the commission of a real estate agent is earned by finding a purchaser ready, willing, and able to enter into a valid contract for the purchase upon the terms fixed by the owner; and having introduced such a one to the owner, the agent cannot be deprived of his right to commissions by the owner negotiating a sale himself.

Section 264.—COMMISSIONS UPON SALE OR EXCHANGE BY OWNER.—Where by the terms of a contract for the sale of real estate through brokers, they are authorized to sell the property for the owners at any time within a year, and it is agreed that the commission shall be paid if the owners should withdraw the property from sale or effect a sale in any way during the year, the brokers are entitled to commissions upon sale or exchange of the land by the owners themselves, and need not show that they had procured or could have procured a purchaser within the time fixed in the contract. The sale or exchange of the land by the owner himself puts it beyond the power of the agent to thereafter make a sale, and this entitles the agent to the same commissions he would have earned if he had sold the land for the amount realized by the owners.

Section 265.—SALE BY OWNER THROUGH ANOTHER AGENT.—Where by the terms of an agreement conferring a sole agency for the sale of land, the principal agrees to pay to the agent the same commission as if he had procured a purchaser, if he should sell or agree to sell the land or part of it to any one in the twelve months next ensuing, an immediate obligation to pay the commission is created against the principal by virtue of the contract, when the principal himself effects a sale through another agent within that period. The agent first appointed has an immediate right of action to recover his commissions. And the owner cannot deduct from the commissions agreed to be paid to his exclusive agent the amount of commissions paid by him to another agent for effecting a sale.

Section 266.—MISREPRESENTATION BY OWNER.—Where by means of a fraudulent misrepresentation of the principal that he had not sold the land, and had changed his intention as to selling it, the agent having an exclusive right of sale was induced to accept part payment of his commission in satisfaction of the obligation of the prin-

principal, he is entitled to rescind the agreement for satisfaction, and recover the full amount of commission which had previously matured in his behalf, by reason of a sale effected by the principal of which he was ignorant.

Section 267.—WHAT CONSTITUTES A SALE BY OWNER. It is not necessary, in order to constitute a sale by the owner sufficient to entitle the agent to his commissions, that the owner should sell for cash, or upon the same terms the agent was authorized to effect, or that he should make a conveyance, or that a legal title should pass to his purchaser. In a case decided by the Supreme Court of California, Shainwald, Buckbee & Co. sued M. K. Cady for commissions on the sale of the townsite of Agua Caliente. In the written agreement given by Cady to the agents, authorizing them to find a purchaser, it was stipulated that if Cady himself made a sale of the property within the term of the agreement, the agents were to be allowed two per cent commissions upon the amount of such sale; Cady sold the land, partly on credit, and the purchaser afterwards failed to make stipulated payments, and surrendered the contract and delivered up possession of the land; and at the time when Shainwald, Buckbee & Co. sued Cady for their commissions, he had again possession of the land. The Supreme Court decided that Shainwald, Buckbee & Co. were entitled to their commissions, because Cady had absolutely placed it out of their power to make a sale of the property at all. Cady had received a portion of the purchase price, and given up possession of the property; and although the purchaser failed to keep possession, and surrendered the contract, and turned the possession back to Cady, the Supreme Court said that a sale was consummated sufficient in law to make Cady liable to the agents under their agreement. (Decided by the Supreme Court of California in the case of Shainwald, Buckbee & Co. vs. M. K. Cady, reported in Volume 92, California Reports, page 83.)

Section 268.—LIABILITY OF AGENT UNDER CONTRACT TO SELL FOR SPECIFIED AMOUNT.—Where an agent accepts real property for sale, and binds himself in writing to sell the property within a certain time for a certain amount, and to accept all over that sum as his compensation, he makes himself absolutely liable to the owner. And if he fails to make a sale for the amount stated in his contract, within the term stipulated, the owner can sue him for damages. The owner will be entitled to recover from the agent as damages the difference between the actual market value of the land, at the end of the term within which it was to be sold, and the amount the agent bound himself to realize from it for the owner.

Section 269.—LIABILITY OF OWNER TO AUCTIONEER.—One representing himself as the owner of real estate, who employs an auctioneer to sell the same under an agreement that, in the event of a sale, the auctioneer shall receive for his services a percentage on the amount bid, cannot, after a sale by the auctioneer, avoid paying him for his services because the purchaser refuses to take the property, owing to a real or alleged defect in the title. The auctioneer in such a case is entitled to compensation for his services, unless there is a special agreement that it shall depend on the consummation of the sale.

Section 270.—WHAT AGENT MUST PROVE IN SUIT TO RECOVER COMMISSIONS.—Where an agent is compelled to sue for his commissions, for effecting a sale of real estate, to entitle him to judgment in his favor, he must show that he was employed by or on behalf of the owner to make the sale, and that his authority, or some note or memorandum thereof, was in writing, subscribed to by the party to be charged, or by his authorized agent. And before an agent can be said to have earned his commission, it must also be shown that he produced a purchaser, who was ready and willing and able to make the purchase on terms satisfactory to his employer, and that



he was the efficient agent or procuring cause of the sale. The duty assumed by the broker is to bring the minds of the buyer and seller to an agreement for a sale, and the price and terms on which it is to be made, and until this is done, his right to commissions does not accrue. It must further appear that the broker performed the duty assumed by him within the time limited in his contract, or within such extension of time as may have been granted by his employer. If he failed to do that, he is not entitled to the commission, even though he made efforts to sell the property, and first called it to the attention of the party who subsequently made the purchase, unless the delay was caused by the negligence, fault or fraud of the owner.

Civil Code, Section 1624.

Section 271.—AGENT'S MISTAKE AS TO TITLE.—When the agent has received a deposit, and the purchaser afterwards claims that the title is not good and demands the deposit back, the agent, if he be a simple agent to sell, will take his own chances if he returns the deposit to the purchaser. For if the owner insists upon the purchaser taking the lands, and litigation follows, and it is decided that the title to the land was in reality good, the agent will be compelled to pay the amount of the deposit to the owner, less his commissions, even though he has already returned the deposit to the purchaser; and he will not be protected by the fact that he obtained the opinion of an attorney, and acted upon it in good faith, that the title was not good, before returning the deposit. His liability for the deposit to his principal will depend upon the fact, whether the title was or was not good, and not upon what he or anybody else may have thought about it, and the only way to determine the matter definitely is by a judgment of a court.

Section 272.—REPUDIATION OF CONTRACT BY VENDOR.—Real estate agents may recover from their principal the commission agreed upon for a sale secured by them, if

the proposed contract of sale was not beyond their authority, though the vendor refuses absolutely to consummate the purchase or to negotiate with reference to it. It is immaterial whether the power conferred upon real estate agents is to sell or merely to secure a purchaser, so far as their right to recover the agreed commission is concerned, if they comply with their part of the contract in procuring a purchaser, to whom the vendor refuses to convey.

Section 273.—TERMS OF PAYMENT, AND REFUSAL TO ACCEPT TENDER.—A contract between a vendor and a real estate agent, providing that the terms of payment are to be as buyer and seller may agree, does not impose upon the agent the duty of selling for cash, even if it be construed as reserving to the vendor the right to agree upon the terms in person; and there can be no reasonable objection to the terms of payment as a defense to the recovery of commissions, if when cash was tendered by the purchaser, no objection was made on account of the terms. When the vendor has refused to accept the tender of the purchase money, and repudiated the contract made by his real estate agent with the purchaser, he cannot defend against the payment of commissions on the ground that the purchase money was not paid.

Section 274.—HUSBAND GIVING AGENT PROPERTY OF WIFE TO SELL.—Where a vendor gives to real estate agents the property of his wife to sell as his property, and describes it in the contract, and they procure a purchaser without knowledge that the title was not in the vendor, his want of title cannot affect their right to recover their commissions from him.

Section 275.—WHAT CONSTITUTES FINDING A PURCHASER.—To find a purchaser means more than to procure some one who will offer to negotiate for the purchase. It implies the production of one who is not only ready and willing to comply with the terms of the pur-

chase, but who has also the present ability to consummate it, and to comply with all of its terms, and who is also willing and ready to do all the acts that may be required to make an actual purchase of the land. To produce one who makes an offer to purchase, and who is without means, or who is not in condition to comply with the terms of the sale, and against whom a claim for damages resulting from a failure to perform the contract of purchase could not be enforced, does not constitute the finding of a purchaser within the meaning of the law; and the mere statement by one who is produced that he is ready and willing to make the purchase, is not sufficient, for he must satisfy the owner that he has the ability to do so. Upon the production of such purchaser, if the transaction is not to be consummated by an immediate delivery of the deed and payment of the purchase price, the owner has the right to demand that a valid, enforceable contract for the purchase of the land shall be executed by him. The owner may, however, waive the execution of such contract; as, if after the broker has introduced the purchaser to him, he himself assumes to prepare a contract, or to deal with the purchaser upon other terms, or accepts a verbal obligation from him.

Section 276.—OWNER AND PURCHASER NEED NOT BE BROUGHT FACE TO FACE.—It is not essential, to entitle the agent to his commissions, that he should bring the owner and purchaser face to face. If the agent secures from the purchaser a valid contract, according to the terms of his agreement with his principal, and a deposit of money if required, and the purchaser is really ready, willing, and able to complete the purchase according to the terms proposed, the agent has performed his duty as fully as though the parties had been brought together in person.

Section 277.—AMOUNT OF COMMISSIONS.—The amount of compensation or commissions which a real estate agent shall receive will in all cases depend upon his con-

tract with the owner, if the contract makes any provision in respect to it; and, in the absence of any agreement on the amount of commissions, it will be measured by the value of the service rendered, and the agent will be entitled to a reasonable compensation, to be ascertained from all the circumstances.

Section 278.—PREVENTION OF SALE BY OWNER.—If the owner in fact has a good title, but goes to the purchaser, or to the purchaser's attorney, and makes representations for the purpose of defeating the sale, and makes the intended purchaser believe that the title is bad, and the latter refuses to proceed with the transaction in consequence, the broker is entitled to his commission.

Section 279.—WHEN PURCHASER AND OWNER ARE NOT BROUGHT TOGETHER, PURCHASER MUST SIGN A WRITTEN CONTRACT.—If the agent does not produce the purchaser before the owner in person, ready and willing to enter into a contract, the purchaser must sign a written contract, and this written contract must be delivered by the agent to the owner. This important rule as to the duty of the agent was stated by the Supreme Court of California in a case where B. M. Gunn, a real estate broker, sued the Bank of California for commissions. The Superior Court of San Francisco decided that Gunn was entitled to commissions, but the Supreme Court set the judgment aside, and decided that upon the facts the broker was not entitled to commissions. Gunn had a contract with the bank, by which he was to sell certain property within a certain time for \$41,000, and was to receive \$1,000 as his commission for making the sale; he found one Keating, within the time, who was ready, able, and willing to purchase at the price of \$41,000, but his agreement with Keating was oral only, and Keating signed nothing, although he orally agreed to buy for the price stated and paid \$500 on account, and took a receipt signed by Gunn alone; the receipt recited that Keating was to have twenty



days within which to examine the title to the property. On the same day Gunn sent to a Mr. Brown, who was acting for the bank in the matter, the following letter: "Dear Sir: I beg leave to inform you that I have this day sold the lot and improvements known as the Golden Gate Flour Mill Property for the sum of forty-one thousand dollars, less one thousand dollars commission, and have given purchaser twenty days to examine title to same. Please send me abstract and approval of sale, and oblige." This letter was returned by Brown with this endorsement: "I herewith approve above sale. The Bank of California. Thomas Brown." Keating refused to complete the sale on account of a defect in the title. Keating was financially able to pay the price he orally agreed to pay for the land, but he signed no contract which bound him to complete the purchase in case the title to the land was perfect, and Gunn did not introduce him to Brown, or inform Brown who was the purchaser referred to in his letter, and Brown did not learn the intended purchaser's name until about the time the title was rejected by Keating's attorney. In the suit brought by Gunn for the \$1,000 commission, the Supreme Court held that, as Keating had not signed any contract, and had not been produced before Brown as the purchaser, Gunn had not "found a purchaser," as the law reads, and was not entitled to the commissions. And the Supreme Court, in its decision of the case, said: "The question here is, What is 'finding' or 'producing' a purchaser within the meaning of the law? Is it sufficient for a broker to merely find a person financially able, and who verbally agrees with him to purchase upon the terms of the vendor, and makes a deposit, but who neither signs a binding agreement to purchase upon the terms of the vendor, nor is produced before the vendor as a person ready and willing to enter into such a contract? It seems to us very clear that this question must be answered in the negative. The contract of the broker is to negotiate a sale, that is, to procure a valid contract to purchase,

which can be enforced by the vendor if his title is perfect; or if he does not procure such contract, to bring the vendor and the proposed purchaser together, that the vendor may secure such a contract, unless he is willing to trust to an oral agreement. This contract on the part of the broker is complete, when he delivers or tenders to the owner a valid written contract, containing the terms of sale agreed on, signed by a party able to comply therewith, or able to answer in damages if he should fail to perform. This is all the agent can do, and when it is done he is entitled to his commissions. But the necessity of a written contract of sale may be rendered unnecessary if the agent bring the vendor and vendee together, and the latter is able and willing, and offers to complete the contract, provided the vendor will make the conveyance. In such a case the agent has done all that he can do, and if the vendor under such circumstances refuses to complete the sale, he nevertheless will be compelled to pay the agent his commissions. The object of the vendor is to effect a sale of his property, and when the real estate broker produces a contract executed by a solvent purchaser, he is then entitled to pay for his services, whether the trade is finally consummated or not, because if the vendee refuses to take the property, the vendor holds the contract, which renders the vendee liable for all damages (including commissions paid by the vendor to the broker) for a failure to comply. The right of Gunn to the agreed compensation depends upon the performance of his contract to procure a purchaser, and as he did not do this, and defendant neither waived nor prevented such performance, he has not earned his commission." (Decided by the Supreme Court of California in the case of Gunn vs. Bank of California, reported in Volume 99, California Reports, page 349.)

Section 280.--WHEN OWNER MUST RETURN MONEY PAID ON CONTRACT.—A vendor under contract for the sale of land, who has received a part of the purchase price

at the time of the execution of the contract, cannot rescind the contract on account of the non-payment of the balance of the purchase price on the day stipulated for in the agreement, without returning or offering to return to the vendee the money that he has received on account of the contract. When a contract of sale and purchase of lands is abandoned or rescinded by the parties, the vendee, though in default, may recover back installments of the purchase-money paid, less the actual damage to the vendor occasioned by his breach of the contract.

Section 281.—AGREEMENT BETWEEN AGENTS TO CO-OPERATE IN SELLING.—Real estate agents may co-operate in the selling of land, for a share of the commissions, and such agreement between themselves need not be in writing. The agreement will be sufficient, if made orally, and the courts will enforce it. An agreement between brokers, to co-operate in making sales of real estate, and to share the commissions, is not required by law to be in writing. The authority from the owner to sell **must** be in writing, but the agreement between the brokers to co-operate in making the sale may be made verbally. (Decided by the District Court of Appeals of California, in the case of *Saunders vs. Yoakum*, which decision is printed in Volume X of the California Appellate Decisions, page 243.)

Section 282.—AUTHORITY TO SELL ON CREDIT.—When a real estate agent receives authority from the owner to sell land on credit, the time of credit specified in their agreement is the measure of the agent's authority. Where the agreement authorizes the agent to sell on credit, but does not specify the time of credit, the agent must use his discretion in the matter, and has authority to give the purchaser a reasonable credit; and the credit given, to be reasonable, must be such as is usual and customary on sales of real estate in the particular vicinity. There is no set rule as to what will be considered a reasonable

credit, but the question must be determined from all the circumstances in each particular case.

Section 283.—POWER OF ATTORNEY TO AGENT TO MAKE DEED.—The question as to what is necessary in a power of attorney for the sale of land, to authorize the agent to execute and deliver a deed to the purchaser, must be determined in each case upon its own peculiar circumstances. As between the parties to the transaction, it is proper to consider their situation at the time of the execution of the power of attorney, and their intention is to be gathered from the words of the instrument, and all the circumstances under which it was written. A power of attorney for the sale of land is sufficient as between the parties to the transaction, whether properly acknowledged or recorded, or not, if it is otherwise valid.

Section 284.—RISK OF PURCHASER WHO TAKES LAWYER'S ADVICE AS TO TITLE.—A purchaser of land is not justified in refusing to accept a conveyance, and in demanding back a deposit paid by him on account of purchase-money, merely because of the opinion of his lawyer, though given in good faith, that the title is not safe, if the opinion is erroneous, and the record title is in fact perfect. The purchaser must take the risk of the soundness of the advice upon which he acts.

Section 285.—LIABILITY OF AUCTIONEER FOR DEPOSIT AT AUCTION SALE.—Although by the terms of an auction sale a deposit of a percentage of the cash payment with the auctioneer pending the examination of the title, which is warranted perfect, makes the auctioneer a stakeholder for the parties; yet when the title is shown to be perfect, the deposit then becomes, according to the terms of the sale, a portion of the cash payment, and the property of the owner of the land, less the charges and commissions of the auctioneer; and the auctioneer cannot thereafter return it to the purchaser except at his own risk.



Section 286.—AGENT'S KNOWLEDGE OF TITLE.—A real estate agent has nothing to do with the title or ownership of the property, and his knowledge as to the title, or the equitable estate of a third person therein, is of no consequence; and his right to the compensation contracted for does not in any way depend on the validity or invalidity of the owner's title to the property.

Section 287.—INTEREST ALLOWED BY LAW ON AGENT'S COMMISSIONS.—A demand for broker's commissions, which is capable of being made certain by computation, draws interest from the time when it became due.

Civil Code, Section 3287.

Section 288.—HOW AUTHORITY OF AGENT CAN BE EXTENDED.—When the term of a real estate agent's employment is about to expire, the authority of the agent cannot be extended by a verbal agreement. The extension of the term of his employment, like the original agreement, must be in writing.

Section 289.—COSTS IN SUIT FOR COMMISSIONS.—Where a real estate agent sues in the Superior Court for commissions, he will have to pay the costs of the court—Clerk's fees, Sheriff's fees, Reporter's fees, jury fees—if the verdict in his favor be for less than \$300. In other words, the agent must secure a judgment for at least \$300, or he will not be entitled to costs. If the agent sues in the Justice Court, for less than \$300, the judgment in his favor will carry the costs.

Code of Civil Procedure, Section 1022.

Section 290.—COMMISSIONS OUT OF PURCHASE-MONEY.—Where the agreement between the owner and the agent is, that the agent is to receive his commissions "out of the purchase-money," or "out of the first money received" on the sale, the agent will not be entitled to any commissions at all, if the sale does not go through.

Under such a contract, the sale must be completed, and the money paid by the vendee, before the agent is entitled to commissions.

Section 291.—SELLING LAND ON SHARES.—Under an agreement between a land owner and a broker, whereby the latter is to sell the land for a share of the proceeds above the cost price and selling expenses after all the land is sold, the procuring of a purchaser for all the tract, who is accepted by the owner and with whom an executory contract is made, is a sufficient performance of the agreement to entitle the broker to his share of the profits.

Section 292.—PURCHASE BY AGENT FROM HIMSELF.—An agent or sub-agent employed to assist in the consummation of a sale of land is incapable of legally purchasing the property from himself without the knowledge of the principal, and such a purchase will always be set aside, at the option of the principal. The reason is, that the agent should not unite his personal and his representative characters in the same transaction; he cannot serve two masters; and the law will not permit him to be exposed to the temptation, or brought into a situation where his own personal interests conflict with the interests of his principal, and with the duties which he owes to his principal. The fiduciary relations between a principal and his agent preclude the latter from having any interest in the subject-matter of his agency adverse to that of his principal. In the employment of an agent the principal bargains for his disinterested skill and diligence, and whenever the interests of the agent become antagonistic to those of his employer he violates his obligation by continuing to act in his behalf without disclosing that fact. A broker, who is employed by the owner to sell his property, is, by the mere fact of accepting such employment, precluded from acquiring an interest in the property he is employed to sell. He cannot act

as such agent in making a sale either to himself or where he is interested in the purchase, and he is equally precluded from having a personal interest in the result of the sale of which his principal is ignorant. Whenever he has an interest in making the sale which is antagonistic to that of his principal, he is unable to discharge his full duty to the latter, and by continuing to act as his agent without disclosing to him the fact of such interest he commits a fraud upon him which will deprive him of all right to compensation for services. (Decided by the District Court of Appeals, in the case of Rauer's Law and Collection Co. vs. W. B. Bradbury, which decision is printed in Volume II of California Appellate Decisions, No. 86, page 377.)

Section 293.—PURCHASE BY AGENT FROM PRINCIPAL. While an agent cannot purchase from himself, he may, where all the circumstances show fair dealing and good faith, purchase land from his principal, although it was placed in his hands to sell to others. There is no law against a purchase by an agent from his principal, where the facts are fully disclosed to the principal, and the agent acts in good faith, taking no advantage of his situation. The principal may, if he sees fit, deal with the agent as with any other person. The agent has the same right to deal directly with his principal as has a stranger. And when the agent deals with his principal at arm's length, and after a full disclosure of all that he knows with respect to the property, the sale will be as valid as though the purchase had been made by a stranger.

Section 294.—AGENT BUYING IN HIS OWN NAME.—When the agent is employed by his principal to buy real estate, and uses the principal's money in making a purchase of the land, but has the deed made in his own name, the law will not permit him to gain any advantage by the transaction. He will be held as a trustee for the principal, and will be compelled to convey the land to the principal.

Section 295.—WHEN AUTHORITY OF AGENT REVOCABLE.—Where a real estate agent has authority to sell land, if no time is stated within which the sale can be made, the authority is revocable at the will of the owner, at any time before it has been exercised.

Section 296.—WHEN OPTION CAN BE REVOKED.—Where an option to sell real estate is without consideration, the owner can revoke the option before the expiration of the time given, if no acceptance has been communicated to him. If a consideration has been paid for the option, the owner cannot revoke it until the time expires. (Decided by the California Court of Appeals, in the case of *Canty vs. Brown*, which decision is printed in Volume IX of California Appellate Decisions, page 475.)

Section 297.—WHICH ONE OF TWO BROKERS IS ENTITLED TO COMMISSIONS.—When two brokers have been employed by an owner, and one of them in fact names the property to the purchaser, and the purchaser negotiates solely with him and at his instance with the owner, the other broker is not entitled to commissions, notwithstanding he casually learns that such purchaser is considering the expediency of making the purchase, and therefore calls upon him and urges the purchase, and reports his name to the owner. Only the broker whose efforts were the procuring cause of the sale is entitled to the commissions from the principal.

Section 298.—AUTHORITY OF AGENT MAKING LEASE FOR TERM LONGER THAN ONE YEAR.—Where a real estate agent is authorized to lease land of his principal, he cannot make a lease for a term longer than one year, unless his authority to make the lease is in writing. The authority of an agent to make a lease for a period in excess of one year must be in writing, and cannot be conferred by oral contract. A lease by an agent exceeding



the term of one year cannot operate as a valid lease for one year, the agent's authority not being in writing. Where the owner of land, without knowledge of a lease made by an agent without authority, has rented the land to another, no power remains in him to ratify the previous unauthorized act of his agent.

Civil Code, Section 1624.

Section 299.—DEATH OF PRINCIPAL REVOKES AUTHORITY OF AGENT.—The death of the principal revokes the authority of the agent, except where the agent's authority is coupled with an interest in the land. In order that the agent's authority shall survive the death of his principal, it is necessary that such an interest or estate shall have passed to the agent as will entitle him to execute the authority to sell in his own name. Sometimes, the agent will hold a power of attorney, from which it can be seen that he has an interest in the land, and that it was the intention of his principal that the power should be irrevocable by death. But, whatever form the agent's written authority may be in, his right to commissions, or the principal's promise to pay commissions on the sale, will not of themselves be sufficient to create an agency which will survive the principal's death. The agent must have acquired by his power from the principal an interest in the land itself. What constitutes an interest in the land, sufficient for keeping alive an agent's authority after the principal's death, depends very much upon the circumstances of each particular case—so much so that illustrations of the rule here would not be of value.

Section 300.—COMMISSIONS ON SALES OF REAL PROPERTY UNDER ORDER OF COURT.—In the settlement of an estate, in any order of sale of real estate, or subsequent to making such order, the court may authorize any executor or administrator to enter into a contract with any bona fide real estate agent to secure a purchaser, providing for the payment by the estate to said agent of a com-

mission, the amount of which shall be specified, payable out of the proceeds of any such sale. If a sale to a purchaser obtained by such agent is returned to the court for confirmation and said sale be confirmed to such purchaser, such contract will be binding and valid as against the estate.

By the execution of any such a contract no personal liability will attach to the executor or administrator, and no liability of any kind will be incurred by the estate unless an actual sale is made and confirmed by the court.

Act of the Legislature, approved March 10, 1909.

Section 301.—PERSONAL PROPERTY BROKERS.—A personal property broker may charge, receive, and collect, for money loaned or advanced on personal property, secured by chattel mortgage, bill of sale, or other contract, or secured by an assignment of power of attorney respecting wages, salary, earnings or income, the sum of two per cent per month, and no more.

Act of the Legislature, approved April 16, 1909.

No further or other charges, either for recording, insuring or examining the security of property, or for the drawing, executing or filing of papers, or for any services or upon any pretext whatsoever beyond the aforesaid charge for interest or discount shall be asked, charged, or in any way received, where the same would thereby make a greater charge for the money or thing advanced than the aforesaid rate of two per centum per month, and where made, all such charges shall be considered and be of the same effect as so much added interest; provided, however, that with the consent of the borrower he may be required to pay the fees or charges actually expended where the same are made necessary by law to give full legal effect to any instrument given hereunder.

No contract of any kind or nature made by any personal property broker which comes within the scope of business as set forth herein, or which in any way involves

any security given to secure the performance of such contract, shall be valid or of any force, virtue or effect, either at law or in equity, if there is therein or thereon directly or indirectly charged, accepted or contracted to be received or paid, either in money, goods, discount, or thing in action, or in any other way, a greater benefit, rate of discount, or interest than the rate of two per centum per month; and if a greater benefit, rate of discount or interest than two per centum per month is directly or indirectly advanced or paid upon any such contract as is in this section designated, the excess above the said rate of two per centum per month so advanced or paid may be demanded and recovered by the person or his legal representatives or assigns who advanced or paid the same from the person or corporation either to whom or for whose use or benefit such payment or advance or any part thereof was made.

The failure of any person or corporation, or any employee, employees, agent, agents, representative or representatives making, renewing or extending a loan or advance properly falling within the scope of business as set forth herein, to comply with any part of the provisions hereof, shall be guilty of a misdemeanor, and for the first offense punished by imprisonment in a county jail not exceeding six months, or by a fine not exceeding \$500, or by both, and for each subsequent offense by a fine of not less than \$50 or more than \$500, or by imprisonment in the county jail of not less than ten days and not to exceed six months, or by such fine or imprisonment.

Penal Code, Section 19.

Act of the Legislature, approved April 21, 1911.

## FIRE INSURANCE

Section 302.—CONTRACT BETWEEN THE PARTIES.—Insurance against loss by fire constitutes one of the common and important contracts in the business of every community. In California the fire insurance business is car-

ried on by corporations, nearly all having ample capital, and fully able to meet such losses as they are required to pay. Yet so many and so varied are the policies issued, and the circumstances and causes of fires and losses, and the claims and adjustments of claims after fires have occurred, that it is not a matter for wonder that conflicts are continually arising between the insurer and the insured, over the terms and conditions of the contract and the rights and obligations of the parties. The Legislature has attempted in our statute law to fix the mutual obligations and liabilities of the parties to the contract of fire insurance, and the Supreme Court of California has in many decisions stated definite rules of construction which must be applied to the policies issued by insurance companies. The contract of insurance is generally defined by the statute of California as being a contract whereby one undertakes to indemnify another against loss, damage, or liability arising from an unknown or contingent event. Insurance against fire is a contract whereby the insurer becomes bound, for a definite premium or consideration, to indemnify the insured against loss or damage to the property named in the policy. The policy, and the conditions contained in it, fix the relations between the parties to the contract, and furnish the measure of their respective rights and liabilities.

Civil Code, Section 2527.

Section 303.—DESIGNATION OF PARTIES.—The party who issues the policy of fire insurance is called the insurer, and the party who is indemnified is called the insured.

Civil Code, Section 2538.

Section 304.—INSURABLE INTEREST.—Every interest in property, or relating to it, or liability in respect to it, of such a nature that a contemplated peril might directly injure the insured, is an insurable interest, in the law of California. The contract of insurance, being one of in-



demnity, the insured must have such an interest in the property as that its destruction will result in pecuniary loss to him. But it is not necessary he shall have a title, provided his interest, whatever it may be, is such that it would be impaired or injured by the destruction of the property. Nor is it necessary that the interest of the insured be personal; for if he has an interest in the property as trustee, agent, mortgagee, commission merchant, common carrier, warehouseman, administrator, pledgee, lessor or lessee, consignee, or judgment creditor, the courts have held that this is an insurable interest. And it has been held that even one who has no title, legal or equitable, in the property, and no present possession or right of possession, has an insurable interest if he will derive benefit from the continued existence of the property, or will suffer loss by its destruction.

Civil Code, Section 2546.

Section 305.—MEASURE OF INTEREST IN PROPERTY.—The measure of an insurable interest in property is the extent to which the insured might be damaged by loss of or injury to the property. Therefore, under the provisions of our law, if the owner of a building insures it for more than it is worth, he will not be entitled to the full amount, merely because the company has issued a policy and accepted a premium on a fictitious value; but the amount the insured will be liable to pay, in all cases, will be the amount, to the extent of the policy, necessary to reimburse the insured for the pecuniary loss he has sustained, unless the insurer has agreed in the policy that in case of loss the property shall be valued at a given sum. Where the interest of the insured is less than a whole ownership, as where he has an interest only as mortgagee, his insurable interest in the property is measured by the amount of the debt, and no more; and in fact, the insured can never be entitled to recover more than his actual loss.

Civil Code, Section 2550.

Section 306.—WHEN INSURABLE INTEREST MUST EXIST. The law of California provides, that the interest insured must exist when the insurance takes effect, and when the loss occurs, but need not exist between those two dates. The meaning of this is, that where the policy does not prohibit it, the insured may dispose of his interest in the insured property, after the policy has been issued, and if, before the term of the policy ends, he becomes again the owner of his interest in the property, and owns it at the time of the loss, he may recover on the policy. The interest of the party in the insurance is simply suspended, when he has disposed of the property without changing the policy to another, until the interest in the property and the interest in the insurance are again vested in himself. A change in interest in a thing insured, after the loss, does not affect the right of the insured to collect the insurance. Where a person holds a policy which includes several articles separately insured, and transfers some of the articles only, his insurance upon the articles not transferred is still good. A policy is not rendered invalid by the death of the insured; for his administrator will hold the policy for the benefit of those who succeed to his estate. The transfer of interest by one of several partners, joint owners, or owners in common, who are jointly insured, to the others, does not avoid an insurance, even though it has been agreed that the insurance shall cease upon an alienation of the thing insured.

Civil Code, Sections 2552, 2553, 2554, 2555, 2556, 2557.

Section 307.—INSURANCE WITHOUT INTEREST ILLEGAL. The sole object of insurance is the indemnity of the insured, and if he has no insurable interest when the policy takes effect, the policy is void; and if he has no insurable interest when the loss occurs, he cannot collect the insurance.

Civil Code, Section 2551.

Section 308.—WAGER POLICIES VOID.—Every policy executed by way of gaming or wagering is void.  
Civil Code, Section 2558.

Section 309.—DUTY OF PARTIES IN MAKING THE CONTRACT.—Each party to a contract of fire insurance, if they expect the policy to be free from attack, must deal fairly with one another, and must not be guilty of misrepresentation or concealment of material facts, upon entering into the contract. Insurance companies act usually, if not always, by agents sent out to solicit insurance, or by local agents residing in the locality where the property to be insured is situated. The company is bound by all the acts of such agents done within the scope of their authority. The insured may act for himself, or through a broker or other agent. But however the parties come together, the law requires the utmost good faith on the part of both. The law of California, recognizing this principle, provides that each party to a contract of insurance must communicate to the other in good faith all facts within his knowledge which are or which he believes to be material to the contract, and which the other has not the means of ascertaining; therefore, it is the duty of the company's agent to disclose fully to the insured all the conditions and requirements of the policy which his company proposes to issue, and it is the duty of the insured to communicate to the agent all facts within his knowledge respecting the situation or condition of the property; but neither party to a contract of insurance is bound to volunteer information of matters which the other knows, or which in the exercise of ordinary care the other ought to know, where there is no reason to suppose him ignorant of them; and neither party is bound to give information to the other of facts of which the other waives communication; and neither party is bound to give the other information of matters open to the inspection equally of both; except, that either party must answer the inquiries of the other, as to any fact affecting the insurance, though it would not

have been necessary to say anything about it if no inquiry had been made. Where inquiries are made by either party of the other, he is bound to answer truthfully and in good faith. Both parties will be responsible for any false representations made during the negotiations, and for any false representation on a material matter the policy will be rescinded. The law deems a representation false when the facts fail to correspond with its assertions or stipulations.

Civil Code, Sections 2563, 2564, 2566, 2579.

Section 310.—THE POLICY OF INSURANCE.—The written instrument in which a contract of insurance is set forth is called the policy of insurance. The policy is required by the law of California to specify, the parties between whom the contract is made, the rate of premium, the property insured, the interest of the insured in the property, if he is not the absolute owner, the risks insured against, and the period during which the insurance is to continue. When an insurance is made by an agent or trustee, the fact that his principal or beneficiary is the person really insured may be indicated by describing him as agent or trustee, or by other general words in the policy. To render an insurance effected by one partner or part owner applicable to the interest of his copartners or of other part owners, it is necessary that the terms of the policy should be made to apply to the joint or common interest. When the description of the insured in a policy is so general that it may comprehend any person or any class of persons, he only can claim the benefit of the policy who can show that it was intended to include him. A policy may be so framed that it will inure to the benefit of whomsoever, during the continuance of the risk, may become the owner of the interest insured. The mere transfer of a thing insured does not transfer the policy, but suspends it until the same person becomes the owner of both the policy and the thing insured.

Civil Code, Sections 2587, 2589, 2590, 2591, 2592, 2593.



**Section 311.—OPEN AND VALUED POLICIES.**—A policy is either open or valued. An open policy is one in which the value of the thing insured is not agreed upon, but is left to be ascertained in case of loss. A valued policy is one which expresses on its face an agreement that the thing insured shall be valued at a specified sum.

Civil Code, Section 2594, 2595, 2596.

**Section 312.—RUNNING POLICY.**—A running policy is one which contemplates successive insurances, and which provides that the object of the policy may be from time to time defined, especially as to the subjects of insurance, by additional statements or indorsements. The general rule is that the property insured must be specified in the policy. But open and running policies are an exception to this rule. They were brought into use to enable merchants to insure their goods shipped at distant ports, when it is impossible for them to know the precise quantity or character of the goods, or the particular vessel in which they are shipped, and thus unable to describe accurately or particularly the subject of insurance. These policies generally, if not universally, require that the risk shall be declared or reported to the company as soon as known to the insured.

Civil Code, Section 2597.

**Section 313.—ACKNOWLEDGMENT IN POLICY OF RECEIPT OF PREMIUM.**—An acknowledgment in a policy of the receipt of premium is conclusive evidence of its payment, so far as to make the policy binding, notwithstanding any stipulation therein that it shall not be binding until the premium is actually paid.

Civil Code, Section 2598.

**Section 314.—AGREEMENT NOT TO TRANSFER.**—An agreement, made before a loss, not to transfer the claim of a person, insured against by the insurer, after the loss has happened, is void.

Civil Code, Section 2599.

Section 315.—CERTAIN WARRANTIES.—A warranty is either expressed in the policy, or implied from circumstances. A statement in a policy, of a matter relating to the person or thing insured, or to the risk, as a fact, is an express warranty of the fact. A statement in a policy, which imports that it is intended to do or not to do a thing which materially affects the risk, is a warranty that such act or omission shall take place; as that a watchman will be kept on the premises, or that a supply of water will be kept on the building ready for use.

Civil Code, Sections 2607, 2608.

Section 316.—WHAT ACTS AVOID POLICY.—The violation of a material warranty, or other material provision of a policy, on the part of either party thereto, entitles the other to rescind. A policy may declare that a violation of special provisions shall avoid it, otherwise the breach of an immaterial provision does not avoid the policy.

Civil Code, Sections 2610, 2611.

Section 317.—EXONERATION OF INSURER.—An insurer is not liable for a loss caused by the wilful act of the insured; but the insurer is not exonerated by the mere negligence of the insured, or of his agents, or others.

Civil Code, Section 2629.

Section 318.—NOTICE OF LOSS.—In case of loss by fire, the insured must give notice to the company of the loss, without unnecessary delay. If the policy fix the time within which notice of loss must be given to the company, the insured must give notice within that time; if the policy does not fix the time, the insured must give notice of the loss within a reasonable time. The notice may be given to an agent of the company, or it may be sent to the office of the company, and it may be sent by the most available means, by mail, or in person. If the policy provides that the notice must be in writing, it must be so given, but verbal notice will be sufficient without such provision.

Civil Code, Section 2633.

Section 319.—PRELIMINARY PROOFS OF LOSS.—When preliminary proofs of loss are required by a policy, the insured is not bound to give such proofs as would be necessary in a court of justice; but it is sufficient for him to give the best evidence which he has in his power at the time. All defects in a notice of loss, or in preliminary proof of loss, which the insured might remedy, and which the insurer omits to specify to him without unnecessary delay as grounds of objection, are waived. Delay in the presentation to an insurer of notice or proof of loss is waived, if caused by an act of the insurer, or if he omits to make objection promptly and specifically upon that ground. If a policy requires, by way of preliminary proof of loss, the certificate or testimony of a Justice of the Peace, or other person, it is sufficient for the insured to use reasonable diligence to procure it, and in case of the refusal of such person to give it, then to furnish reasonable evidence to the insurer that such refusal was not induced by any just ground of disbelief in the facts necessary to be certified to.

Civil Code, Sections 2634, 2635, 2636, 2637.

Section 320.—DOUBLE INSURANCE.—A double insurance exists where the same interest in property is insured by several insurers separately. In cases of double insurance, the several companies must contribute ratably toward the loss, without regard to the dates of the several policies.

Civil Code, Section 2642.

Section 321.—ALTERATION INCREASING RISK.—An alteration in the use or condition of a thing insured from that to which it is limited by the policy, made without the consent of the insurer, by means within the control of the insured, and increasing the risk, entitles an insurer to rescind a contract of fire insurance.

Civil Code, Section 2753.

Section 322.—**ALTERATION WHICH DOES NOT INCREASE RISK.**—An alteration in the use or condition of a thing insured from that to which it is limited by the policy, which does not increase the risk, does not affect a contract of fire insurance.

Civil Code, Section 2754.

Section 323.—**VERBAL CONTRACT TO ISSUE POLICY.**—A verbal contract to issue a policy, made by the owner of the property and the agent of the company, is a valid agreement. Therefore, if the owner of a building applies to an agent, or if the agent solicits the insurance, and a verbal agreement is made for a consideration that a policy will be issued for a certain amount covering the property, and the company then refuses to issue the policy, it will be liable for the loss, whether the policy is issued or not. If a fire occurs and destroys the property, the owner can sue the company for damages, for its failure to issue the policy, and recover his loss on the property, not exceeding the amount of insurance verbally agreed upon.

Section 324.—**CERTIFICATE OF NOTARY.**—Under a provision of a fire insurance policy requiring that in case of loss by fire the assured must obtain the certificate of the Notary nearest the insured building, not concerned in the loss as a creditor or otherwise, nor related to the assured, as to the justice of the claim, where it appears that the nearest Notary refused to act, on the ground that he was employed by the insurance company in ascertaining the facts and taking affidavits concerning the fire, the assured is relieved of the necessity of obtaining his certificate, and need not inform the company of the reason for obtaining the certificate of another Notary. (Decided by the Supreme Court in the case of Noone vs. Transatlantic Fire Insurance Co., which decision is printed in Volume 88 of the California Reports, page 152.)

Section 325.—**FALSITY OF MATERIAL REPRESENTATIONS BY INSURED.**—One who makes an application for fire insur-



ance must not make false representations, as to any material fact upon which the insurance depends, for if he does the company may cancel the policy. This the company may do by making a tender of the premium back to the insured, and notifying him that the policy is canceled on account of the false representation. And if the company, where a false representation has been really made, tenders the premium back and gives the insured notice of the cancellation of the policy, before the commencement of a suit on the policy, this will operate as a rescission of the policy and will defeat the suit. As an illustration, it may be cited, that a condition in a policy of insurance upon a mill, that during such time as the mill is idle a watchman shall be employed by the insured "to be in and about the premises day and night," is broken if during the time the mill is idle but one watchman is employed, who was not instructed to watch the mill at night, and who slept every night in a building three or four hundred feet from the mill. A man employed to watch in the daytime, and who is permitted to sleep at night, is not a watchman at night. And to entitle the insured to recover upon such a policy it must be shown that he has in good faith employed a watchman to perform the duties required by the terms of the policy. (Decided by the Supreme Court in the case of Rankin vs. Amazon Insurance Co., which decision is printed in Volume 89 of the California Reports, page 203.)

Section 326.—STATEMENTS AS TO VALUATIONS.—A provision in the policy that the application shall be considered a warranty, and if the property is overvalued in it, the policy shall be void, applies only where the statements as to value are intentionally false.

If there is no valuation in the policy, the measure of indemnity in an insurance against fire is the expense it would be to the insured, at the time of the commencement of the fire, to replace the thing lost or injured in the condition in which it was at the time of the injury.

Act of the Legislature, approved April 15, 1909.

Section 327.—RIGHTS OF MORTGAGEE—EFFECT OF SALE UNDER FORECLOSURE.—A mortgagee of insured property, to whom the loss is made payable, is entitled to recover the loss to the full extent of the mortgage debt, although the fire occurs after a foreclosure sale and purchase by the mortgagee, but before the time for redemption has expired and before the execution of a sheriff's deed to the mortgage. (Decided by the Supreme Court in the case of *National Bank vs. Union Insurance Co.*, which decision is reported in Volume 88 of the California Reports, page 497.)

Section 328.—INSURANCE BY COMMISSION MERCHANT—INCORRECT STATEMENT AS TO OWNERSHIP.—The Springfield Fire and Marine Insurance Co. insured against loss by fire a stock of goods, the property of a corporation in which F. H. McCormick and F. N. Delanoy were stockholders; McCormick and Delanoy held the goods as security for advances made to the corporation, but in the application for the insurance they described the property as their own. The policy referred to the application, and made it a part of the policy, and provided that if the insured were not the sole, absolute, and unconditional owners of the property, and if their interest was not truly stated in the policy, then the policy should be void. McCormick and Delanoy sued the company for the insurance but the Supreme Court decided that the policy was invalid, because the ownership was not truly stated in the application. (Decided by the Supreme Court in the case of *McCormick vs. The Springfield Fire and Marine Insurance Co.*, which decision is printed in Volume 66 of the California Reports, page 361.)

Section 329.—RIGHT OF ARBITRATION.—When a policy of fire insurance provides for arbitration upon the written request of either party, in case of difference touching any loss or damage after the proof, the arbitration is not a condition precedent to the right of action, unless demand-

ed after proof of loss ; and if no demand for arbitration is made within a reasonable time, or until after a right of action has become complete by the lapse of sixty days from the proofs of loss, the right to demand arbitration is waived. No right of arbitration exists under a fire insurance policy when the stipulation for arbitration does not definitely fix the number of arbitrators nor provide a mode of selection. (Decided by the Supreme Court in the case of *Case vs. Manufacturers' Insurance Co.*, which decision is printed in Volume 82 of the California Reports, page 263.)

Section 330.—**WAIVER OF PROOF OF LOSS BY ARBITRATION.**—A provision in a policy of fire insurance, requiring the assured in case of loss to forthwith give notice thereof to the insurer, and produce a certificate of preliminary proof from a notary or magistrate, is waived, if the insurer, after learning of the loss, makes no objections to the absence of the notice and preliminary proof, but joins in proceedings for determining the loss by arbitration, which proceedings are required by the policy to be taken after proof of the loss has been received in due form. In such a case the company cannot deny the authority of its agents to waive the provision of the policy as to notice and preliminary proof, when it adopts their acts in that regard, and relies on the award as a defense to an action to recover for the loss. (Decided by the Supreme Court in the case of *Carroll vs. Girard Fire Insurance Co.*, which decision is printed in Volume 72 of the California Reports, page 297.)

Section 331.—**WAIVER OF CONDITION AS TO PREPAYMENT OF PREMIUM.**—An express provision in a policy of insurance that the company shall not be liable on the policy until the premium is actually paid is waived by the unconditional delivery of the policy to the assured, as a completed and executed contract, under an agreement that a credit shall be given for the premium, and the company

is liable for a loss which may occur during the period of credit. If an insurance policy contains a formal receipt of premium, its unconditional delivery is conclusive evidence of payment, so far as to estop the company issuing it from denying the validity of the policy, notwithstanding a declaration in the policy that it shall not be binding until the premium is actually paid. (Decided by the Supreme Court in the case of *Farnum vs. Phoenix Insurance Co.*, which decision is printed in Volume 83 of the California Reports, page 246.)

Section 332.—REMEDY FOR UNAUTHORIZED TERM OF CREDIT.—The giving of any credit by authority of the insurance company being a waiver of actual payment as a condition precedent to liability, the only remedy for an unauthorized term of credit is for the company to personally notify the assured, who is obliged to pay the premium, that he must pay at the end of the authorized term of credit, or that the policy will be canceled for non-payment of premium. If the notice is sent by mail, and is not received, the cancellation for non-payment of premium is ineffective.

Section 333.—INSURANCE OF UNOCCUPIED BUILDING.—Insurance companies may by their acts and conduct be estopped from availing themselves of a defense which they might otherwise interpose to an action upon their policies, or may waive their right to avail themselves of such defense. If a building is insured against loss by fire under a policy containing a proviso that it shall be or become void in case the building is or shall become vacant or unoccupied when it was well known to the company's agents at the date of the policy and subsequently that it was and remained unoccupied, the company will be presumed to have waived the clause as to occupancy. (Decided by the Supreme Court in the case of *West Coast Lumber Co. vs. State Investment and Insurance Co.*, which decision is printed in Volume 98 of the California Reports, page 502.)



Section 334.—LIABILITY OF INSURANCE COMPANY FOR FIRES CAUSED BY EARTHQUAKES.—The property of the insured was consumed in a general conflagration in San Francisco which had its origin in the earthquake of 1906. The fire was started at several points in the city and spread to the insured property. The policy provided that the company should not be liable for loss caused directly or indirectly by invasion, or for loss or damage occasioned by or through any earthquakes. In *Williamsburgh City Fire Ins. Co vs. Willard*, Volume 164, Federal Reporter, page 404, it was decided by the Circuit Court of Appeals that although the words “directly or indirectly” applied to invasions, they could not be made to embrace earthquakes; “occasioned” was equivalent to “caused”; and a loss indirectly caused by the progress of a fire from a distance, originally started by an earthquake, is a loss which the insurance company must pay. The Supreme Court of the United States affirmed the decision of the Circuit Court of Appeals.

Section 335.—CONDITION AS TO CHANGE OCCURRING IN BUILDING.—If a policy of insurance against fire contains a clause, that if the building shall fall except by fire, the insurance shall immediately cease, and the walls of the building are of brick, and a portion falls, leaving more than three-fourths standing, the building is not a fallen building within the condition of the policy, and if destroyed by fire in that condition the insurance company is liable for the loss. A clause in an insurance policy that it shall be void if any change occurs in the building by which the risk is increased without the consent of the company, has reference only to a change produced by the act of the insured. It does not mean a change occasioned by accident, or by any cause over which the insured had no control. (Decided by the Supreme Court in the case of *Breuner vs. Liverpool and London and Globe Insurance Co.*, which decision is printed in Volume 51 of the California Reports, page 101.)

Section 336.—RULES FOR INTERPRETING CONTRACT OF INSURANCE.—A contract of insurance must be interpreted by the same rules as apply to any other contract. It must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as that intention can be ascertained. If the contract for insurance is in writing, as where an application has been signed and a policy issued, the intention of the parties is to be ascertained from the application and the policy alone, if possible. The whole contract is to be taken together. When it is partly written and partly printed, the written parts control the printed parts, and, if there is any conflict between the two, the printed part must be disregarded. The contract may be explained by reference to the circumstances under which it was made, and in cases of uncertainty it is to be interpreted most strongly against the party who caused the uncertainty to exist. Where the policy provides for the forfeiture of the contract, upon failure to perform conditions named, the policy is to be interpreted most strongly in favor of the insured. The law does not favor forfeitures, and the insurance company must make out a very strong case showing that a condition has not been complied with, before a court will declare the policy forfeited. The suit of *Yoch vs. Home Mutual Insurance Company*, decided by our Supreme Court in 1896, illustrates the rules which are to be applied to the interpretation of contracts of insurance, where the effort is to ascertain the intention of the parties at the time of contracting. The policy contained a printed condition that, unless otherwise provided by agreement indorsed thereon, it should be void if (any usage of trade to the contrary) gasoline was kept on the premises. Testimony was given at the trial of the case tending to show that gasoline is one of the articles of merchandise usually kept in country stores, but that it is customary to keep it in a room or building by itself. It was also shown that, during the month prior to the fire, the insured would, in the daytime, bring small quantities of gasoline—one or

two cans—from a building on another lot, which was used for storing it, into a room within the insured building and adjacent to the store, for the purpose of selling it at retail to her customers. The Supreme Court decided the case against the insurance company, and said: “It must be held that it was the intention of the defendant to insure gasoline, if it was an article usually kept in the country stores, and that, if such was its intention, it was no violation of the policy for the insured to keep gasoline upon the premises as a part of the stock of merchandise. When the defendant agreed to insure a stock of merchandise ‘such as is usually kept in country stores,’ it must be presumed to have known the character of the merchandise which is usually kept in country stores, and that gasoline is one of these articles, and, consequently, that the policy covered all such merchandise. When it was shown that gasoline is one of the articles which is usually kept in country stores, the court correctly held that it was a part of the subject of the insurance, and that the insured did not violate the policy by keeping it in stock. The defendant, when it issued the policy in question, knew the character of country stores, and that Mrs. Brooks kept for the purpose of retailing to her customers all of the articles kept by her, and that the gasoline which she kept was to be disposed of by retail in the same way as the other portion of her stock. To give the policy the construction now claimed by the defendant would be to hold that, although it agreed with her to insure all the stock she usually kept in her store, yet, if she continued to keep that stock, she forfeited all rights under the policy. The clause in the policy above quoted, and which is relied on by the appellant, cannot be construed as having this effect. The qualification therein which excepts the policy from becoming void, viz., ‘unless otherwise provided by agreement indorsed thereon,’ is found in the policy itself. The subject matter of the risk—the stock of merchandise ‘such as is usually kept in country stores’—was written in the policy by the insurer; and, as the defendant must be deemed to

have intended thereby to insure all such articles as are usually kept in a country store, it must be held that this was an 'agreement indorsed' upon the policy, which removed the exemption from liability that would otherwise have existed. If there be any repugnance between the written phrase, 'such as is usually kept in country stores,' and the printed clause, 'any usage or custom of trade or manufacture to the contrary notwithstanding,' the former controls the latter, as being the more deliberate expression of the contracting parties." (Decided by the Supreme Court in the case of Yoch vs. Home Mutual Insurance Co., which decision is printed in Volume 107 of the California Reports, page 327.)

Section 337.—TIME WHEN POLICY TAKES EFFECT.—The general rule is that a policy, if delivered, takes effect from its date, unless it be otherwise stated in the policy, or unless there is evidence of a contrary intent. If the premium be paid, and the policy be not delivered till afterward, the policy yet takes effect as of its date, even though a loss intervenes. The circumstances and the intent of the parties are to control. Where the exact time of the commencement and termination of the risk are specified in the policy, or, if no policy has been written, in the contract, such specification governs in all cases; where no time has been expressly indicated, the circumstances of the case will be considered for the purpose of determining it; if there are no circumstances indicating the intention of the parties, and no time is specified in the contract, the risk will be deemed to have commenced at the date of the contract. In the case last mentioned, if, before the contract of insurance is made, the property has ceased to exist, although unknown to the parties, the risk never attaches.

Section 338.—CONTRACT OF REINSURANCE—EFFECT OF PRIOR LOSS.—Where an insurance company, which has insured the property of a lumber company against loss by



fire, contracts for reinsurance by way of partial indemnity with another insurance company, in the absence of any circumstances indicating the mutual intention of the parties to give to the contract of reinsurance a retrospective effect, the company agreeing to insure is not liable if the property insured had been destroyed by fire prior to the agreement, though at the time of the application and agreement neither of the insurance companies knew of the prior destruction of the property. (Decided by the Supreme Court in the case of *Union Insurance Company vs. American Fire Insurance Company*, which decision is printed in Volume 107 of the *California Reports*, page 327.)

Section 339.—WARRANTIES.—Warranties, in insurance, are distinguished into two kinds: Affirmative, or those which allege the existence at the time of the insurance of a particular fact, and avoid the contract if the allegation be untrue; and promissory, or those which require that something shall be done or omitted after the insurance takes effect and during its continuance, the doing or omission of which will avoid the contract. An express warranty is a stipulation inserted in writing on the face of the policy, on the literal truth or fulfilment of which the validity of the entire contract depends. By a warranty the insured stipulates for the absolute truth of the statement made, and the strict compliance with some promised line of conduct, upon penalty of forfeiture for non-compliance with the warranty. A warranty must be strictly complied with. Whether the fact stated or the act stipulated for be material to the risk or not is of no consequence, the contract being that the matter is as represented, or shall be as promised; and unless it prove so, whether from fraud, mistake, negligence, or other cause, not proceeding from the insurance company, and not caused by the intervention of the law or act of God, the insured can have no claim. One of the very objects of the warranty is to preclude all controversy about whether the statement was

material or not. The only question in such cases is, Has the warranty been kept? If the warranty be a statement of facts, it must be literally true; if a stipulation that a certain act shall or shall not be done, it must be literally performed. Illustrating the law, it may be said, that if a house be insured against fire, and the language of the policy is, "Warranted, during the policy, to be covered with thatch," the insurance company will be discharged from liability if during the insurance the house should be covered with wood or metal, although the risk is diminished; for a warranty excludes all argument in regard to its reasonableness, or the probable intent of the parties. Parties may contract as they please. When a warranty is adopted by them in their contract, the courts will not inquire as to its wisdom or folly, but must exact its observance as agreed to. The Supreme Court of California construed a "watchman clause" in a policy issued by the Scottish Union and National Insurance Co., which read: "Warranted by the insured that during such times as the within buildings or works are idle or not in operation, whether closed for repairs or during the absence of workmen, or otherwise (except as otherwise herein stated), one or more watchmen shall be on duty constantly, day and night, in and immediately about said buildings or works, or this policy shall be null and void." The insurance was on a sawmill, which was destroyed by fire. The watchman of the insured worked about the mill during the day, and slept at night in a house about 350 yards distant, and visited the buildings several times during the night. The Supreme Court held that this was not a sufficient compliance with the warranty in the policy that a watchman should be kept on duty "constantly day and night in and immediately about" the insured buildings. There was also a controversy in the case as to whether the mill was "shut down," within the meaning of the warranty in the policy, and the Supreme Court held that a sawmill which had stopped running for the winter is shut down, within the meaning of such term in a policy, though men

are employed about the premises shipping lumber, and though the machinery has not been dismantled and put in shape for the winter. (Decided by the Supreme Court of California in the case of McKenzie vs. Scottish Union and National Insurance Co., which decision is printed in Volume 112 of the California Reports, page 548.)

Section 340.—PROVISION AS TO BRINGING SUIT.—The policies of very many insurance companies have provisions similar to the following: “No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity until after a full compliance by the insured with all the requirements of this policy, nor unless commenced within twelve months next after the fire.” And, also, that “proof of loss be made to the company within sixty days after the fire.” Where a policy contains these provisions, a suit on a policy cannot be maintained if the proofs of loss were made after sixty days, and there is no evidence of a waiver by the company of the condition.

Section 341.—PROOFS OF LOSS TO REINSURING COMPANY. Where the risks of a fire insurance company are reinsured in another company, under a contract whereby the latter assumes the management and control of the business of the original insurer, and agrees to make adjustment and prompt payment of its losses, proofs of loss under a policy issued by the original insurer may be made to the reinsuring company. (Decided by the Supreme Court of California in the case of Whitney vs. American Insurance Co., which decision is printed in Volume 128 of the California Reports, page 121.)

Section 342.—LIABILITY OF HEIR FOR PREMIUM.—A policy procured by an heir, “on the estate” of deceased, protects the interest of the heir in the property, though the administrator of the estate repudiates the contract and has nothing in fact to do with it. Having procured the

policy, the heir is liable for the premiums, and will be compelled to pay them, no matter what action the administrator may take with regard to them. (Decided by the Supreme Court of California in the case of Phoenix Insurance Co. vs. Hancock, which decision is printed in Volume 123 of the California Reports, page 222.)

Section 343.—INSURANCE ON HARVESTER WHILE IN USE. A policy of insurance on a harvester “while in use” does not cover a loss occurring while it is stored in a shed, and is not being actually used for harvesting purposes. (Decided by the Supreme Court of California in the case of Slinkard vs. Manchester Fire Assurance Co., which decision is printed in Volume 122 of the California Reports, page 595.)

Section 344.—LIABILITY OF COMPANY ON POLICY WRITTEN BUT NOT DELIVERED UNTIL AFTER FIRE.—A liability may attach to an insurance company, when the policy has been written but not delivered until after the fire. If the policy is the memorial of a contract, which in its essentials has been agreed upon verbally before the fire, and which the parties intended should take effect according to its terms, the fact that the policy was not delivered to the insured until after the fire will make no difference in the company’s liability; and if the terms of the contract to insure, as verbally entered into, and afterwards embraced in the undelivered policy, are clearly shown, the company would be liable without any delivery of the policy at all. If, however, there has not been any verbal agreement, before the fire, that the company should insure the building and issue its policy accordingly, then delivery of the policy after the building has been destroyed, to the knowledge of the parties, will not give to the policy a binding effect. It is therefore in all such cases a very important question, whether the insurance company considered or admitted at any time that the contract was complete, and the risk had attached; and in this connection, the courts



will always consider as strong evidence in favor of the insured the declarations and admissions of the agents of the insurance company, while engaged in the transaction with the insured, and up to the time the policy is delivered. Such statements and admissions of the agents, to bind the company, must be made at the very time of the negotiations and transactions for the insurance, and while acting in the business with the insured. (Decided by the Supreme Court of California in the case of Crawford vs. Transatlantic Fire Insurance Co., which decision is printed in Volume 25 of the California Reports, page 609.)

Section 345.—AUTHORITY OF AGENTS.—It is not necessary that the agent of a fire insurance company should have or produce a written appointment, for his agency may be shown in many other ways. The fact of his agency may be inferred from the relations he sustains to the company, from the course of prior dealings and transactions connected with it, and from the acts of the company with reference to the particular policy in question. The agent's authority may be actual or ostensible. He may possess or show an appointment in writing, or the company may accept the fruits of his labors, and knowingly permit him to hold himself out publicly as the company's agent. In either case the company will not be allowed to shield itself behind the defense that he was not really an agent. The powers of the agent are *prima facie* coextensive with the business intrusted to his care, and will not be narrowed by limitations not communicated to the person with whom he deals. An insurance company, establishing a local agency, must be held responsible to the parties with whom it transacts business for the acts and declarations of the agent within the scope of his employment.

Section 346.—BROKERS OR AGENTS.—The question arises as to the difference between a broker and an agent, in suits where a company makes defense that the person claimed to have acted as its agent was not such in fact,

but did act for the owner of the property. Where it is shown that the owner of the property solicits an insurance agent to procure insurance for him, and himself pays the commission, such agent will be deemed not the agent of the company but of the insured. He will be deemed a mere broker, making a bargain for the insured, and receiving a commission from him for so doing. But where the company employs a person to solicit insurance, and provides him with blanks and other papers, and pays him a commission on the business he brings in, he will be deemed the agent of the company, and not of the insured. In following sections will be found illustrations of some leading principles of agency in fire insurance, as decided by the Supreme Court of California.

Section 347.—AGENT WAIVING FORFEITURE.—Simon Silverberg sued the Phoenix Insurance Company upon a policy of fire insurance. When the case was tried, it appeared that soon after the occurrence of the fire, the company being notified of the fact, directed the proofs to be made out, which was done, and subsequently required Silverberg to present witnesses and vouchers. After these witnesses and vouchers had been examined at length, the company said the proofs were satisfactory, instructed Silverberg to make out formal proofs of loss, and said that the money would be paid at the expiration of the sixty days allowed by the policy for the payment of the loss. Upon the expiration of sixty days, a demand being made for the money, the company declared that the policy had been avoided by a breach of its conditions, and refused to pay. The question was whether the company's agents had waived the condition of the policy of which it was claimed there had been a breach. The facts were, that the agents of the company had full knowledge of all the facts upon which the forfeiture was based, and with this knowledge informed Silverberg that the insurance would be paid, and then refused to pay and claimed forfeiture. The Supreme Court held that the acts of the company's

agents in examining witnesses and vouchers, and then expressing satisfaction and a willingness to pay, after full knowledge of all the facts, constituted a waiver of any forfeiture by Silverberg resulting from a breach of the conditions of the policy. The agents of the company were authorized, there being no provision in the policy to the contrary, to modify or altogether waive a condition of the policy. (Decided in the case of *Silverberg vs. Phoenix Insurance Company*, which decision is printed in Volume 67 of the *California Reports*, page 36.)

Section 348.—AUTHORITY OF LOCAL AGENT.—A local agent of a fire insurance company, who has authority to make a consummated and binding contract of insurance by countersigning and delivering its policy, and to extend a limited credit for the premium, has the power of the company to waive a condition in the policy that it shall not be binding until the premium is actually paid, and does waive such condition by delivering the policy unconditionally under an agreement for credit, though the term of credit given be in excess of his actual authority.

Section 349.—OSTENSIBLE GENERAL POWER OF LOCAL AGENT.—A local agent of a fire insurance company who is clothed with ostensible general authority to solicit applications, receive proposals, make contracts for insurance, receive first premiums, and to countersign and deliver policies within certain limits, is presumed to have the general power of the company within those limits to waive conditions precedent to the liability of the company upon policies which he is authorized to countersign and deliver. Such local agent is presumed to have power co-extensive with the business intrusted to his care, and his powers will not be narrowed by limitations not communicated to the person with whom he deals; and he may bind his principal by any acts or contracts within the general scope of his apparent authority.

**Section 350.—KNOWLEDGE OF AGENT IS THE KNOWLEDGE OF COMPANY.**—Whether an agent has general or only particular powers is not determined by simply calling him an agent. Where any fact which would constitute a breach of a condition precedent to any liability of the company on the policy is fully known to an agent of the company, local or general, who is authorized to consummate the contract of insurance, the knowledge of such agent is the knowledge of the company; and if the agent, with a knowledge of the breach of the condition, still recognizes the validity of the policy, this constitutes a waiver by the company of the forfeiture, and also a waiver of the general requirement that conditions can only be waived in writing indorsed on the policy itself. (Decided by the Supreme Court of California in the case of *Farnum vs. Phoenix Insurance Company*, which decision is printed in Volume 83 of the California Reports, page 260.)

**Section 351.—ORAL WAIVER OF INDORSEMENT BY LOCAL AGENT.**—A local agent who is clothed with general power to consummate contracts of insurance within a certain territory stands in the stead of the insurance company, and represents its whole power to give validity to the contracts which he is authorized to execute and deliver, and to waive conditions precedent to its liability by oral agreement, so far as to estop the company from questioning its original liability by reason of non-indorsement of the waiver upon the policy when delivered.

**Section 352.—APPLICATION MADE OUT BY AGENT OF COMPANY.**—Insurance companies who do business through the medium of agents are responsible for their acts within the general scope of the business intrusted to their care, and no limitations of their authority will be binding on parties with whom they deal, which are not brought to their notice. When the agent undertakes to prepare the application for the insured, he will be regarded in doing so as the agent of the insurance company, and not of the



insured; and any misstatements contained in the application, of which the insured is ignorant, will not be fatal to the policy. (Decided by the Supreme Court of California in the case of *Wheaton vs. North British and Mercantile Insurance Company*, which decision is printed in Volume 76 of the California Reports, page 415.)

Section 353.—FRAUD OF AGENT—DISOBEDIENCE OF INSTRUCTIONS.—A fire insurance company is bound by the acts, omissions, or frauds of its agent when acting within the scope of his employment, though he may have disobeyed the instructions received; and the company cannot be permitted to derive any advantages from the fraud of the agent in the manner of transacting its business, upon the claim that the agent's fraudulent conduct was not authorized. Therefore, fraudulent concealment of facts, or fraudulent representations of an agent to the insured, binds the company he represents, when the insured has no notice of any limitations upon the authority of the agent in the transaction. (Decided by the Supreme Court of California in the case of *Stockton Harvester Works vs. Glenn's Falls Insurance Co.*, which decision is printed in Volume 98 of the California Reports, page 557.)

Section 354.—WAIVER OF PETROLEUM CLAUSE BY AGENT. A condition in a policy for loss occurring while petroleum is kept or used on the insured premises is waived, if the general agent of the insurer, having knowledge at the time the insurance was effected that petroleum was kept and used, consented thereto, and represented to the insured that such use would not vitiate the policy. (Decided by the Supreme Court of California in the case of *Herman Kruger vs. Western Fire and Marine Insurance Company*, which decision is printed in Volume 72 of the California Reports, page 91.)

Section 355.—WAIVER CONTINUES DURING RENEWAL OF POLICY.—A waiver of conditions in the policy, made by

the agent of the company at the time the insurance was originally effected, continues during the subsequent renewals of the policy.

Section 356.—AUTHORITY OF SPECIAL AGENT.—Power given to a special agent of a fire insurance company to receive proposals for insurance, and to receive premiums, subject to the rules of the company and instructions given by its general agent, includes power to make a verbal contract for insurance, sanctioned by instructions from the general agent.

Section 357.—ORAL PROMISE OF POLICY.—A declaration by the special agent to the insured, made at the time of his application for insurance, that it was unnecessary for him to make a written application, as the general agent was asking for the insurance, and a promise by the special agent that a policy should be given to the insured which would cover the insurance applied for to the date of the oral application, taken in connection with letters from the general agent asking if the insurance would be required, is sufficient proof of the special agent's authority to bind the company for insurance from the date of the oral application. (Decided by the Supreme Court of California in the case of *Harron vs. City of London Fire Insurance Co.*, which decision is printed in Volume 88 of the California Reports, page 16.)

Section 358.—AGENT'S KNOWLEDGE OF FORMER INSURANCE.—Many policies contain the provision, that "if any other insurance has been or shall hereafter be made upon the said property and not consented to by this company in writing hereon, this policy shall be null and void." But notwithstanding this provision, where there is former insurance, which is not noted on the policy in question, if the agent of the company knows of the former insurance, and the policy is issued, such knowledge of the agent is knowledge of the company, and the policy is valid.

Section 359.—OFFER TO RENEW POLICY.—Where the local agent of a fire insurance company has no actual or ostensible authority to contract for the renewal of a policy, a proposal made to such agent for a renewal is, until communicated to and accepted by the insurance company, nothing more than a mere offer to renew the policy; and the fact that the agent promised to communicate the offer to the company, and did not do so until after the loss, does not create a binding contract of renewal. (Decided by the Supreme Court of California in the case of *Stewart vs. The Helvetia Swiss Fire Insurance Co.*, which decision is printed in Volume 102 of the California Reports, page 218.)

Section 360.—UNAUTHORIZED CONTRACT OF LOCAL AGENT.—The local agent of the New Zealand Insurance Company at Fresno was not authorized to make contracts, but sent all applications to the company at San Francisco for acceptance; he received an application, however, and told the insured that the insurance would begin at that time; before the application was mailed from Fresno the building was burned; the company was sued for the loss, but the Supreme Court said, that as the local agent had no actual or ostensible authority to make a contract of insurance, and the building being a saloon, which class of risks the company did not take, the company was not liable for loss and it made no difference that at the time when the application was made the special agent of the company, who had no authority to enter into contracts, was present and approved of it. (Decided by the Supreme Court of California in the case of *O'Brien vs. New Zealand Insurance Company*, which decision is printed in Volume 108 of the California Reports, page 227.)

Section 361.—WAIVER FROM KNOWLEDGE OF AGENT.—The act of the agent of a fire insurance company, in issuing a policy on an application alleging unconditional own-

ership, is a waiver of such condition, where the agent knows at the time that the property is mortgaged, and that a foreclosure suit is pending. (Decided by the Supreme Court of California in the case of Breedlove vs. Norwich Union Fire Insurance Co., which decision is printed in Volume 24 of the California Reports, page 164.) A is the true owner of property which stands in the name of B. A informs the insurance company of the condition of the title, and has the property insured in the name of B, and the loss made payable to A "as his interest may appear." It was stipulated in the policy that it should be void if the interest of the insured should be other than unconditional and sole ownership. Held by the District Court of Appeals, that the issuance of the policy upon the known facts was a waiver of all conditions inconsistent therewith, and the true owner was entitled to recover the amount of the policy, although the title to the property stood in the name of another. The company was informed of this before the policy was issued, and was bound by that knowledge. (Decided by the California District Court of Appeals in the case of Loring vs. Duchess Insurance Company, which decision is printed in Volume I, California Appellate Decisions, page 128.)

## LIFE INSURANCE.

Section 362.—INSURABLE INTEREST.—The contract of life insurance must be based upon the insurable interest, and this insurable interest must arise from the relation of the party taking the insurance to the insured, either as surety or debtor, or from the ties of blood or marriage, so that from the relation thus established there may be some expectation of benefit or advantage in the continuance of the insured life. Every person has an insurable interest in the life of himself; and in the life of any person on whom he depends wholly or in part for education or support; and in the life of any person under a legal obligation to him for the payment of money, or respecting property



or services, of which death might delay or prevent the performance; and in the life of any person upon whose life any estate or interest vested in him depends. A person who is not related to another has no insurable interest in his life, unless the latter is his debtor, or in some other pecuniary way so connected with him as to afford reasonable ground for expecting some relief or advantage from the continuance of the life of the insured. The result of this rule is, a person cannot take insurance upon the life of a mere stranger, not related, or under obligation in some pecuniary way; for such a policy would be nothing more nor less than a wager or gambling policy, which the law does not allow. Husband and wife have an insurable interest in the lives of each other, and so do father and child. It has been held by the courts that a stepson has no insurable interest in the life of his stepfather, where he has a separate home and family of his own, and is not a creditor, nor in any way dependent upon or responsible for the support of the stepfather. An interest, to be insurable, must be an interest in favor of the continuance of the life, and not an interest in its loss or destruction. Public policy does not allow any one having no insurable interest to be the owner of a policy of insurance upon the life of a human being. The public has an interest, independent of the consent and concurrence of the parties, that no inducement shall be offered to one man to take the life of another.

A person has such an insurable interest in his own life that he may insure it for the benefit of his heirs, or even for the benefit of a stranger.

Civil Code, Section 2763.

Section 363.—CREDITOR'S INTEREST.—A creditor may lawfully take out a policy on the life of his debtor in an amount sufficient to cover the debt, with interest.

Section 364.—DELIVERY OF POLICY.—Actual delivery of the policy into the hands of the insured is not necessary in order to bind the company. If the first premium is

paid to and accepted by the company, and a policy issued with intent to deliver to the insured, it is valid and binding even though the insured dies before the policy reaches him. An unconditional delivery of a policy by the company to its agent, for delivery to the insured, binds the company, although the agent never parts with possession of his policy. Possession of the policy by the insured, at his death, is *prima facie* proof that it was duly delivered to him.

Section 365.—PLACE OF CONTRACT.—It is sometimes important to determine where the law puts the location of a contract, the place where it is deemed to have been made. The rule on this subject is, that the contract is deemed to have been made where the policy is issued. For instance, if the application is sent to the office of the company in New York, and the policy is executed and issued there, it is a New York contract, to be construed according to the laws of New York. If, on the other hand, the policy is executed and issued from the office of the company in the State of California, it is a California contract, to be construed according to the laws of California. It is to be understood, in this connection, however, that it is within the power of the contracting parties, by the express terms of their contract, to establish the place where it shall have effect, and under what laws it shall be construed. If anything appears in the application upon which the policy is issued, or in the policy itself, that discloses an intention that the policy shall be construed according to the laws in force in any other state than the one in which it was actually made and delivered, such intention must govern, and will have the effect, so far as the construction of the contract is concerned, to change the place of its execution so as to correspond with the intention of the parties.

Section 366.—INTERPRETATION OF POLICY.—A policy of life insurance must be interpreted and construed according to the principles which govern other contracts. The

intention of the parties is the first thing to be considered, and that intention is to be ascertained from the policy itself, if possible. The courts do not favor forfeitures, and a policy of insurance will always be construed in favor of upholding the contract, if such construction is possible from the language used. All conditions involving forfeitures will be construed strictly as against the company, and most favorably for the insured. When a policy is capable of two meanings, that which is most favorable to the insured will be adopted by the courts.

Section 367.—CONDITIONS IN POLICY.—The conditions in a life insurance policy, to be observed by the insured—as, for payment of premiums, or against use of alcoholic beverages, and other stipulations—must be adhered to by the insured, at the risk of rendering the policy void if he does not observe them. But the courts construe the conditions named in a policy most strongly against the company, and in favor of the insured. There are conditions stated, too, the violation of which does not render the policy absolutely void, but only make it voidable, at the option of the insurance company. Of these, the conditions prohibiting the insured from traveling, or living in certain places, may be cited as illustrations of the kind of conditions the breach of which renders the policy voidable, and not void. The company, upon the breach of such conditions, may proceed to declare a forfeiture, and cancel the policy; or it may, by accepting further premiums, or recognizing the continued life of the policy, evidence a waiver on its part of the voidable conditions.

Section 368.—WAIVER OF CONDITIONS.—A waiver of the conditions in a policy may be either verbal or in writing. If in writing, the writing speaks for itself. But a waiver may be shown by acts and circumstances. Where the agent of a life insurance company, having knowledge of some act on the part of the insured constituting a breach of condition, proceeds to treat the

policy as valid, by accepting premiums, or in some other way ignoring the breach, the breach of condition will be considered as having been waived by the company. If an insurance company, having knowledge of facts rendering its policy voidable, deliberately claims and exercises a right under the policy, it waives all right to avoid it because of such facts. An insurance company is not permitted to collect premiums with full knowledge of facts which might avoid the policy (and knowing that the insured continues to disregard a provision working a forfeiture), and then to deny the validity of the policy when a loss occurs. The company will always be bound by its waiver of the conditions in a policy. If an insurance company, after knowledge of any default for which it might terminate the policy, enters into negotiations or transactions with the insured which recognize the continued validity of the policy and treat it as still in force, the right to claim a forfeiture for such previous default is waived.

Section 369.—**REPRESENTATION BY INSURED.**—A person who makes an application for life insurance must not make false representations about any material matter, for if he does so the policy can be canceled. False answers about the health of the applicant will render a policy voidable. Concealing the truth, as when the applicant states that he is in good health, when in fact he is suffering from disease, will be good reason for canceling a policy.

The law presumes that all the answers to questions contained in an application are true and correct, and it is for the company to show that the statements which it claims as false really are so, if it seeks to avoid a policy on the ground of false representations by the insured.

Section 370.—**EFFECT OF DISEASE OF APPLICANT ON POLICY.**—A disease known to the applicant for a policy, but not discovered by the agents of a company, and con-



cealed by the applicant, will be ground for forfeiture. But, if the applicant is afflicted with a disease and does not know it, his failure to communicate the fact will not be regarded as a fraud upon the insurance company.

Section 371.—MEANING OF “GOOD HEALTH.”—The health of body required at the time of making application for life insurance is not perfect and absolute health, nor is it necessary that it should exclude all disorders and infirmities which may possibly shorten life. Only an ordinary and reasonable degree of health is required, in order to make the insurance effective. The term “good health,” when used in an application for a policy of life insurance, means that the applicant has no grave, important, or serious disease, and is free from any ailment that seriously affects the soundness and healthfulness of the system. A mere temporary indisposition, which does not tend to weaken or undermine the constitution of the person at the time of insuring, does not render a policy void.

Section 372.—MALT AND SPIRITUOUS BEVERAGES.—The question, “Do you use malt or spirituous beverages?” asked of an applicant for life insurance refers to a customary and habitual use, and not to a single or occasional act or use; and the question, “Have you always been temperate?” means moderation, and an abstinence from excessive or injurious use, and not total abstinence from the use of malt or sprituous liquors.

Section 373.—PAYMENT OF PREMIUMS.—Notice must be given to the insured of the time when premiums become due, and the premiums must be paid promptly, in order to save the policy from forfeiture, unless the company waives payment when due and extends the time.

Section 374.—CREDIT FOR PREMIUMS.—A provision in a policy of insurance, that the company shall not be liable until the premium is actually paid, is waived by an

unconditional delivery of the policy to the insured as a completed contract under an express or implied agreement that credit shall be given.

Section 375.—**FORFEITURE FOR NON-PAYMENT OF PREMIUM.**—If the premium is not paid, after notice from the company, the policy will be forfeited. But when an insurance company receives payments of premiums when they are overdue, and when it might refuse payment and declare the policy forfeited under its “by-laws,” it cannot accept and keep the money, and still insist upon a forfeiture.

Forfeiture of a life insurance policy for non-payment of premium when it becomes due cannot be insisted upon by the company, when by the terms of the policy the insured is entitled to share in the profits, and therefore cannot know without notice what amount he is required to pay, and no notice has been given to him of what sum the company claims to be due on the policy.

Section 376.—**REVIVAL OF FORFEITED POLICY.**—A policy of life insurance, forfeited for non-payment of premium at maturity, can only be revived, as far as the insured is concerned, by the actual payment and acceptance of the overdue premium, or by a contract with the company based upon a sufficient consideration to revive and reinstate the insurance.

A reinstatement of the insurance after a forfeiture is not the making of a new contract, where no different terms are agreed upon. It simply restores the old policy.

Section 377.—**PROOF OF DEATH.**—The requirements of the policy as to proof of death must be complied with by the beneficiary before he can collect the insurance. If the policy states the proof which must be furnished, and the time, its directions must be obeyed. If the policy does not state the particular proof, or the manner of making proof, the fact of death must be shown to the company

with reasonable definiteness and certainty, in any reasonable manner.

Failure to furnish proof of death within the time limited by a life insurance policy is waived, when the company makes a proposal to settle, or absolutely refuses to pay, or denies all liability, or asks for additional proof without making objection that the proof given was not furnished in time.

Section 378.—SUICIDE.—In the law of insurance, suicide is not, as a rule, recognized as a ground of exemption from liability, or for the forfeiture of a policy issued for the benefit of a third person, unless it is expressly so provided in the policy. Where a policy of life insurance contains a condition that in case the insured shall die by his own hand, whether sane or insane, the policy shall become null and void, the suicide of the insured will prevent a recovery on the policy. But the presumption is against the suicide of the insured, and the company, if it refuses to pay on that ground, must itself furnish satisfactory proof that the insured did die by his own hand. Nothing appearing to the contrary, the legal presumption is that a man died from a natural cause, and not from an act of self-destruction. The mere fact of death in an unknown manner creates no presumption of suicide.

Section 379.—ASSIGNMENT OF POLICY.—A policy of life insurance may be assigned and transferred, and the assignee will stand in the place of the insured, be subject to his liabilities, and entitled to his benefits. The assignment may be an absolute sale and transfer, or the policy may be assigned as security for a debt. Notice of the assignment is not required to be given to the company, unless the policy contains a condition requiring such notice to be given.

A policy on the life of the insured payable to his legal representatives may be assigned by him, with the consent of the company; and in such case the rights of the as-

signee are paramount to the claims of the heirs or personal representatives of the insured.

The assignment may be to relatives of the insured, or it may be to a stranger who has no insurable interest in the life of the insured.

If a policy of insurance expressly stipulates that no assignment shall be valid without the consent of the company, an assignment without such consent is without effect. The insured, in this case, is presumed to have taken out the insurance with knowledge of the stipulation, and is bound by it.

Assignment of a policy, made payable to certain described beneficiaries, should be with the consent of the beneficiaries.

Civil Code, Section 2764, 2765.

Section 380.—BENEFICIARIES OF LIFE INSURANCE.—The insured may have the policy made payable to his estate, or to particular persons named in the policy as beneficiaries.

A policy of life insurance creates vested interests in the beneficiaries named therein, and although the contract may be canceled by the company in case the insured fails to keep the stipulations, the insured himself cannot revoke the contract without the consent of the beneficiaries.

The proceeds of a policy of life insurance made payable to the heirs of an insured husband go to his widow and children, in the proportion provided by the laws of the state for distribution of estates.

Section 381.—DEDUCTION OF UNPAID PREMIUMS.—The insurance company is entitled to have the amount of premium remaining due for the current year, after the death of the insured, deducted from the amount of the policy before paying it.

Section 382.—PAID-UP LIFE INSURANCE.—Every contract or policy of life insurance hereinafter made by any



person or corporation, with or upon the life of a resident of this state, and delivered within this state, shall provide, in event of default of any premium payment after three full annual premiums shall have been paid on such policy, that without any action on the part of the insured, the net value of such policy based upon the reserve basis used in computing the premiums and values thereunder (the policy to specify the mortality table and rate of interest so adopted), which net value shall be at least equal to its entire net reserve at the date of default, including that of dividend additions, if any, based upon a standard not lower than the American experience tables of mortality with interest at three and one-half per cent yearly, less a surrender charge of not more than two and one-half per cent of the face amount of the policy and of any existing dividend additions thereto and less any indebtedness to the company on or secured by the policy, shall be applied as a single premium to the purchase of one of the following stipulated forms of insurance.

First.—Paid-up non-participating term insurance in the amount of the face of the policy, plus dividend additions, if any, for such a period as the net value outlined above will purchase at the net single premium, at the attained age of the insured at the time of the lapse, based upon the reserve basis described in the policy; provided, however, that under endowment contracts the term shall not extend beyond the endowment period named in the original contract, and the excess value, if any, shall be applied as a net single premium to purchase in the same manner paid-up pure endowment insurance, payable at the end of the endowment period named in the contract if the insured be then living; or

Second.—Paid-up non-participating term insurance in the amount of the face of the policy, plus dividend additions, if any, and less any outstanding indebtedness, for such a period as the net value outlined above will purchase at the net single premium, at the attained age of the insured, based upon the reserve basis described in the

policy; provided, however, that under endowment contracts the term shall not extend beyond the endowment period named in the original contract, and the excess value, if any, shall be applied as a net single premium to purchase in the same manner paid-up pure endowment insurance, payable at the end of the endowment period named in the contract if the insured be then living; or

Third.—Paid-up non-participating insurance payable at the time and on the conditions named in the policy for such an amount as the net value outlined above will purchase at the net single premium, at the attained age of the insured, based upon the reserve basis described in the policy.

Provided, however, that the policy may be surrendered to the company, at its home office, upon due application by the legal owner thereof, within one month after date of premium default, for a specified cash value which shall be at least equal to the sum which would be otherwise available for the purchase of the automatic form of insurance provided therein; and provided further that the company may defer payment of such cash value for not more than six months after application therefor is made.

No agreement between the company and the policyholder or applicant for insurance contrary to the foregoing shall be held to waive any of the provisions provided above.

Any life insurance policy issued upon the life of a resident of this state, and delivered within this state, which does not contain an automatic non-forfeiture value in conformity with the foregoing shall be construed as granting non-participating term insurance, as provided in paragraph first of this section, and such a benefit shall be read into the contract.

The provisions of this section shall not apply to annuities, industrial policies, or to term contracts issued for periods of twenty years or less.

Act of the Legislature, approved May 1, 1911.

## ACCIDENT INSURANCE

Section 383.—THE POLICY.—A policy of accidental insurance is issued and accepted for the purpose of furnishing indemnity against accidents and death caused by accidental means, and the language of the policy must be construed with reference to the subject to which it is applied. In the construction of an accident insurance policy, however, its provisions will be usually interpreted most favorably for the insured, in case of doubt or uncertainty in their terms. If a stipulation or exception in a policy of accident insurance is capable of two meanings, that will be adopted which is most favorable to the insured. In other words, if there is doubt or uncertainty as to the meaning of terms employed in a policy of accident insurance, the language must be liberally construed in favor of the insured, so as not to defeat, without a plain necessity, his claim to indemnity, which, in effecting the insurance, it was his object to secure.

Section 384.—DEFINITION OF ACCIDENT.—Some difficulty has been experienced by the courts in arriving at a satisfactory and comprehensive definition of the word “accident” as used in insurance policies. Worcester defines “accident” to be “an event proceeding from an unknown cause, or happening without the design of the agent.” Webster’s definition is, “An event that takes place without one’s foresight or expectation; an event which proceeds from an unknown cause, or is an unusual effect of a known cause, and therefore not expected.”

The definition of “accident” generally adopted is, an event happening without any human agency, or, if happening through human agency, an event which, under the circumstances, is unusual, and not expected by the person to whom it happens.

Disease, produced by the action of a known cause, cannot be considered accidental. In the term “accident” is necessarily involved some violence, some unusual and unforeseen cause.

Section 385.—DEATH BY ACCIDENTAL MEANS.—“Death by accident” means death from an unexpected event which proceeds from an unknown and unforeseen cause, happening without the design of the person to whom the accident occurs. Unnatural death, the result of accident of any kind, imports an external and violent agency as the cause.

Section 386.—HANGING ONE’S SELF WHILE INSANE.—It has been held that it is accidental death, where one hangs one’s self while insane, unconscious of the act, and incapable of an intelligent intention to take one’s own life.

Section 387.—BEING KILLED BY ROBBERS.—Death by being waylaid and assassinated by robbers makes the company liable, under a policy insuring the person so killed against death through “external, violent, or accidental means.”

Section 388.—DEATH BY DROWNING.—Drowning is a death from external violence, in the meaning of an accident insurance policy.

Section 389.—DEATH FROM FRIGHT.—Where the insured was driving upon a public street, and his horse became frightened by an unsightly object, without upsetting the carriage or coming in contact with anything, and was at length brought under control, but the insured was apparently greatly endangered at the time, and suffered so severely, either from fright or strain caused by physical exertion in restraining the horse, that he died within an hour afterward; it was held that his death was caused by “bodily injuries effected through external, violent, and accidental means.”

Section 390.—DEATH BY FALLING.—Where the insured while traveling by rail, during a stoppage of a train on a bridge, went to the front platform of the coach in which



he was riding and stepped off, falling through a hole in the floor of the bridge and meeting his death, this was held to be death by accident in the meaning of the policy.

If a temporary and unexpected physical disorder causes the insured to fall and injure himself, the injury is received through violent, external, and accidental means, and the insurance company is liable therefor.

Section 391.—TAKING POISON BY MISTAKE.—The words “taking poison,” as employed in a clause of an accident policy, exempting the company from liability for death from “taking poison,” mean the voluntary, intentional taking of poison, and do not include cases of accidental poisoning. Hence, the company is liable for the death of one who, by mistake, drinks carbolic acid for peppermint, which he wishes to take for some ailment, and dies from the effects of the poison.

Section 392.—DEATH BY MURDER.—Whether the company will be liable for death by murder, in any case, depends upon the wording of the policy. If the policy exempts the company from liability for “intentional injury inflicted by the insured or any other person,” then the company will not be liable for the murder of the insured. If, however, the policy covers merely “injuries from external violence and accidental means,” without the exception above noted, the company will be liable when the insured is murdered.

Section 393.—DEATH BY INHALING GAS.—The inhaling of gas, within the exemption of insurance policies, means a voluntary and intelligent act of the insured, and not an involuntary and unconscious act. Therefore, if the insured while he sleeps is accidentally overcome by inhaling gas without intention or connivance on his part, the company will be liable.

Section 394.—LOSS OF HAND.—Under a policy making the company liable for “loss of hand” it is not necessary

to show that the entire hand is gone. If the hand is so injured as to become useless as a hand, the company is liable as for an entire loss.

Section 395.—LOSS OF FEET.—Under a policy agreeing to pay an indemnity for loss of “two entire feet,” it is not necessary to show, in order to make the company liable, that the legs or feet were severed from the body. It is only necessary to show that the insured has lost the use of the feet as members of his body; as, where through accident the lower part of the body has become totally paralyzed, and thus the use of the feet destroyed.

Section 396.—LOSS OF BUSINESS.—If a policy provides that the insured shall be paid a certain sum per week, for the immediate, continuous, total loss of such business time as may result from an accidental injury, he is entitled to recover if his injury is such that he loses his time in the business in which he was engaged when insured, though there are other business pursuits from which the accident would not incapacitate him.

Section 397.—TOTAL DISABILITY.—The insured suffers a total disability, if his injuries are of such character that common care and prudence require him to desist from the transaction of any business pertaining to his occupation, so long as it is reasonably necessary to effect a cure. Ability to occasionally perform some single and trivial act of business does not render his disability partial instead of total, provided he is unable substantially, to a material extent, to transact any kind of business pertaining to his occupation.

Section 398.—“DISEASE” AND “BODILY INFIRMITY.”—The words “disease” and “bodily infirmity,” as used in an accident insurance policy, exempting the company from liability for injury from such cause, mean, practically, the same thing. They refer to some ailment or

disorder of a somewhat established and settled character, some physical disturbance to which the insured is subject, and of which an attack causing him an injury is, in some measure, a recurrence; and they have no reference to some temporary disorder, new and unusual, arising from some sudden and unexpected derangement of the system.

Section 399.—DISEASE PRODUCED BY KNOWN CAUSE.—Disease produced by the action of a known cause cannot be considered as accidental. Thus, disease, or death, engendered by exposure to heat, cold, damp, the vicissitudes of climate, or atmospheric influences, cannot properly be said to be accidental.

Section 400.—CONDITION AGAINST CHANGE OF OCCUPATION.—Where there is a condition in a policy against change of occupation by the insured, the word “occupation” has reference to the vocation, trade, or calling which he is engaged in for hire or for profit; and the condition does not preclude him from the performance of acts and duties which are incidentally connected with the life of men in any or all occupations, or from engaging in mere acts of exercise, diversion, and recreation.

Section 401.—VOLUNTARY EXPOSURE TO DANGER.—The insured cannot recover upon an accident insurance policy if he has voluntarily and intentionally exposed himself to danger from which the injury resulted. Voluntary exposure to unnecessary danger, within the meaning of an accident insurance policy, is a conscious or intentional exposure involving gross or wanton negligence on the part of the insured. The intention of the insured to voluntarily expose himself to unnecessary danger may be inferred from his acting so recklessly and carelessly as to show an utter disregard of known danger, or from his taking the risk of a danger which is so obvious that a prudent man, exercising reasonable forethought, would not have taken it.

Section 402.—PROOF OF INJURY OR DEATH.—Proof of injury or death must be given in the manner and at the time specified in the policy. The company may waive the proof, either expressly, or by conduct and acts which amount to a waiver; but, if there is no waiver on the part of the company, proof of injury or death must be made as required by the policy.

## MARINE INSURANCE

Section 403.—THE POLICY.—Marine insurance, though upon property and against risks unknown on land, is to be construed by the same principles which apply to other insurance policies. In the construction of a marine policy, as in the construction of other policies, the intention of the contracting parties is the first thing to be determined. The courts will enforce the contract as the parties intended it to be, provided this can be done without violation of law and in accordance with a reasonable construction of the policy. Premiums must be paid, and other conditions observed, as faithfully in marine as in other forms of insurance. Conditions may be waived also, in like manner as in other insurance, by express consent, or by conduct and circumstances from which a waiver is inferred.

Section 404.—DEFINITION OF MARINE INSURANCE.—Marine insurance is an insurance against risks connected with navigation, to which a ship, cargo, freightage, profits, or other insurable interests in movable property, may be exposed during a voyage or a fixed period of time.

Civil Code, Section 2655.

Section 405.—INSURABLE INTEREST.—The owner of a ship has in all cases an insurable interest in it, even when it has been chartered by one who covenants to pay him its value in case of loss.

The insurable interest of an owner who has hypothecated the ship as security for a loan, to be repaid only in



case the ship survives a particular risk, voyage, or period, is only the excess of the value of the ship over the amount secured as a loan.

Freightage, in the sense of a policy of marine insurance, means all the benefits derived by the owner either from the chartering of the ship or its employment for the carriage of his own goods or those of others.

The owner of a ship has an insurable interest in expected freightage, which he would have certainly earned had it not been for the happening of a peril insured against. This interest in expected freightage exists, in the case of a charter-party, when the ship has broken ground on the charter voyage; or if a price is to be paid for the carriage of goods, when they are actually on board, or there is some contract for putting them on board and both ship and goods are ready for the specified voyage.

One who has an interest in the things from which profits are expected, has an insurable interest in the profits.

The charterer of a ship has an insurable interest in it to the extent that he is liable to be damaged by its loss.

Civil Code, Sections 2659, 2660, 2661, 2662, 2663, 2664, 2665, 3017.

Section 406.—PERILS OF THE SEA.—The definition of perils of the sea, covered by marine insurance, is very extensive. Perils of the sea are all perils, losses, and misfortunes of a marine character, or of a character incident to a ship as such. They include storms and waves; rocks, shoals, and rapids; and other obstacles, though of human origin, such as floating logs, abandoned vessels, or other derelicts of the sea. They also include changes in climate; the confinement necessary at sea; animals peculiar to the sea; and all other dangers met with only upon the sea. An injury resulting from a defective condition of the ship itself, or negligent operation of the machinery, is not a peril of the sea. Thus, it has been held that the

bursting of a steam boiler is not a peril of the sea, as understood in the law of marine insurance. A peril of the sea is one associated with the peculiar character and nature of the ocean, suggesting its winds and storms and tides, its tempestuous waves, its obscuring fogs, and other dangers inevitably incident to its navigation.

Section 407.—DUTY OF PARTIES.—In effecting a contract of marine insurance, it is the duty of the parties, the insurer and the insured, to reveal to each other all information materially affecting the risk; unless the same facts are known to both, or which in the exercise of ordinary care either party has the means of ascertaining. Neither party can withhold from the other any information peculiarly within his own knowledge, material to the risk, and he is required to state the exact and whole truth in relation to all matters about which he makes representations, voluntarily, or in answer to inquiries made of him.

(a) *Presumption of Knowledge of Loss.*—A person insured by a contract of marine insurance is presumed to have had knowledge, at the time of insuring, of a prior loss of the thing insured; provided, it must appear that the information might possibly have reached him in the usual mode of transmission and in the usual time.

(b) *Concealments Which Only Affect the Risk in Question.*—If a party applying for a policy of marine insurance conceals facts, in respect to any of the following matters, such concealment does not make the entire contract void, but does release the insurance company from a loss resulting from the risk concealed: (1) The national character of the insured; (2) The liability of the insured property to capture and detention; (3) The liability to seizure from breach of foreign laws of trade; (4) The want of necessary documents; and (5) The use of false and simulated papers.

(c) *Effect of Intentional False Representations.*—If the party applying for a policy intentionally makes false

representations about any matter respecting the risk, whether material or immaterial, the insurance company may rescind the entire contract.

Civil Code, Sections 2563, 2564, 2669, 2671, 2672, 2676.

Section 408.—WARRANTY OF SEAWORTHINESS.—In every marine insurance upon a ship, or freight, or freightage, or upon anything which is the subject of marine insurance, a warranty is implied that the ship is seaworthy.

(a) *Seaworthiness Defined*.—A ship is seaworthy when reasonably fit to perform the services and to encounter the ordinary perils of the voyage contemplated by the parties to the policy. A warranty of seaworthiness extends not only to the condition of the structure of the ship itself, but requires that it be properly laden, and provided with a competent master, a sufficient number of competent officers and seamen, and the requisite appurtenances and equipments, such as ballast, cables, anchors, cordage, sails, food, water, fuel, lights, and other necessary or proper stores and implements for the voyage.

(b) *Different Degrees of Seaworthiness at Different Stages of the Voyage*.—Where different portions of the voyage contemplated by a policy differ, in respect to the things requisite to make the ship seaworthy therefor, a warranty of seaworthiness is complied with if, at the commencement of each part of the voyage, the ship is seaworthy with reference to that portion.

(c) *Delay in Making Repairs*.—When a ship becomes unseaworthy during the voyage, an unreasonable delay in making repairs will exonerate the insurance company from liability.

(d) *Seaworthiness for Cargo*.—A ship which is seaworthy for the purpose of an insurance upon the ship may nevertheless, by reason of being unfitted to receive cargo, be unseaworthy for the purpose of insurance upon the cargo. To be seaworthy for cargo, the vessel must be properly equipped, with competent master and officers

and men, and all necessary and proper stores and implements for the voyage.

(e) *Neutral Papers*.—Where the nationality or neutrality of a ship or cargo is expressly warranted, it is implied that the ship will carry the requisite documents to show such nationality or neutrality, and that it will not carry any documents which cast reasonable suspicion thereon.

(f) *At What Time Seaworthiness Must Exist*.—An implied warranty of seaworthiness is complied with if the ship be seaworthy at the time of the commencement of the risk, except in the following cases: When the insurance is made for a specified length of time, the implied warranty is not complied with unless the ship be seaworthy at the commencement of every voyage she may undertake during that time; and, when the insurance is upon the cargo, which, by the terms of the policy, or the description of the voyage, or the established custom of the trade, is to be transshipped at an intermediate point, the implied warranty is not complied with, unless each vessel upon which the cargo is shipped or transshipped be seaworthy at the commencement of its particular voyage.

Civil Code, Sections 2681, 2682, 2683, 2684, 2685, 2686, 2687, 2688.

Section 409.—*DEVIATION FROM VOYAGE*.—In order to hold the insurance company liable in the event of a loss, it must appear that no material deviation from the voyage named in the policy was made. Where, for instance, a cargo of wheat was insured from San Francisco to Hong Kong, the transshipment of the wheat at Yokohama was a deviation, even though the bill of lading authorized it, because the insurance had not been effected with reference to that part.

(a) *What Constitutes Deviation*.—Deviation is defined by the law to be a departure from the course of the voyage insured, or an unreasonable delay in pursuing the



voyage, or the commencement of an entirely different voyage. When the voyage contemplated by a policy is described by the places of beginning and ending, the voyage insured is one which conforms to the course of sailing fixed by mercantile usage between those places. If the course of sailing is not fixed by mercantile usage, the voyage insured by a policy is the way between the places specified which, to a master of ordinary skill and discretion, would seem the most natural, direct, and advantageous.

(b) *Deviation Exonerates the Insurer.*—An insurer is not liable for any loss happening subsequently to an improper deviation. But a deviation from the voyage contemplated by the policy is sometimes proper, and when properly made will not exonerate the insurer. A deviation may be properly made, when caused by circumstances over which neither the master nor the owner of the ship had any control; or, when necessary to comply with a warranty, or to avoid a peril of the sea, whether insured against or not; or, when made in good faith and upon reasonable grounds of belief in its necessity to avoid a peril to ship or cargo; or, when made in good faith for the purpose of saving human life or relieving another vessel in distress. Every deviation not specified above as being proper is pronounced by the law to be improper, and when improperly made will release the insurer from liability.

Civil Code, Sections 2692, 2693, 2694, 2695, 2696, 2697.

Section 410.—TOTAL AND PARTIAL LOSS.—A loss may be either total or partial. Every loss which is not total is partial. A total loss may be either actual or constructive.

(a) *Actual Total Loss.*—An actual total loss is caused by a total destruction of the thing insured; or a loss by sinking, or by being broken up; or any damage to the insured property which renders it valueless to the owner

for the purposes for which he held it; or any other event which entirely deprives the owner of the possession, at the port of destination, of the property insured. An actual loss may be presumed from the continued absence of the ship without being heard of; and the length of time which is sufficient to raise the presumption depends on the circumstances of each case.

Upon an actual total loss, a person insured is entitled to payment without notice of abandonment.

(b) *Constructive Total Loss*.—A constructive total loss is one which gives to a person insured a right to abandon the property by declaring to the insurer that he relinquishes to him his interest in the thing insured.

(c) *Insurance Against Total Loss*.—An insurance confined in terms to an actual total loss does not cover a constructive total loss, but covers any loss which necessarily results in depriving the insured of the possession at the port of destination of the entire thing insured.

(d) *Liability of Insurer When Voyage is Broken Up*.—When a ship is prevented, at an intermediate port, from completing the voyage by the perils insured against, the master must make every exertion to procure, in the same or a contiguous port, another ship, for the purpose of conveying the cargo to its destination; and when he has done so, the liability of a marine insurer of the cargo continues after it is thus reshipped. And in addition, a marine insurer is bound for damages, expenses of discharging, storage, reshipment, extra freightage, and all other expenses incurred in saving the cargo reshipped, up to the amount insured.

Civil Code, Sections 2701, 2702, 2703, 2704, 2705, 2706, 2707, 2708, 2709, 2712.

Section 411.—ABANDONMENT.—A person insured by a contract of marine insurance may abandon the thing insured, or any particular portion separately valued by the policy or otherwise separately insured, and recover for a total loss thereof, when the cause of the loss is a peril

insured against, in any of the following cases: (1) If more than half in value is actually lost, or would have to be expended to recover it from the peril; (2) If the property is injured to such an extent as to reduce its value more than one-half; (3) If a ship is insured, and the contemplated voyage cannot be performed without incurring an expense to the insured of more than half the value of the ship, or without incurring a risk which a prudent man would not take under the circumstances; (4) If the cargo or freightage is insured, and the voyage cannot be performed nor another ship procured by the master, within a reasonable time and with reasonable diligence, to forward the cargo, without incurring an expense of more than half the value, or without incurring a risk which a prudent man would not take under the circumstances.

Freightage cannot in any case be abandoned unless the ship is also abandoned.

An abandonment must be neither partial nor conditional. An abandonment, to give the insured the right to claim the full amount of insurance, must include not only an intention to abandon, but also a relinquishment to all right to the property. The insured must in fact and in good faith abandon the ship; and he cannot still claim ownership, or continue in the use of the vessel, after he has given notice of abandonment as for a total loss.

An abandonment must be made within a reasonable time after information of the loss, after the commencement of the voyage. Where the information upon which an abandonment has been proved incorrect, or the property insured was so far restored when the abandonment was made that there was then in fact no total loss, the abandonment becomes ineffectual.

An abandonment is equivalent to a transfer by the insured of his interest to the insurer, with all the chances of recovery and indemnity. An acceptance of an abandonment is not necessary to the rights of the insured. But the acceptance of an abandonment, whether express

or implied, is conclusive upon the parties, and admits the loss and the sufficiency of the abandonment.

An abandonment once made and accepted is irrevocable, unless the ground upon which it was made proves to be unfounded; as, where information of the loss of a ship turns out to be incorrect.

On an accepted abandonment of a ship, freightage earned previous to the loss belongs to the insurer of the freightage; but freightage subsequently earned belongs to the insurer of the ship.

(a) *Refusal to Accept*.—If an insurance company refuses to accept a valid abandonment, it is liable as upon an actual total loss, deducting from the amount any proceeds of the thing insured which may have come to the hands of the insured person.

(b) *Waiver of Formal Abandonment*.—If a marine insurance company pays for a loss as if it were an actual total loss, it is entitled to whatever may remain of the property insured, or its proceeds or salvage, as if there had been a formal abandonment.

(c) *Omission to Abandon*.—If a person insured omits to abandon, he may nevertheless recover his actual loss.

(d) *Notice of Abandonment*.—Abandonment is made by giving notice thereof to the insurer, which may be made orally or in writing. A notice of abandonment must be explicit, and must specify the particular cause of the abandonment; but it is only necessary to state enough to show that there is probable cause to abandon, and the notice need not be accompanied with proof of interest or of loss.

Civil Code, Sections 2716, 2717, 2718, 2719, 2720, 2721, 2722, 2724, 2725, 2727, 2728, 2729, 2730, 2731, 2732.

Section 412.—MEASURE OF INDEMNITY.—A valuation in a policy of marine insurance is conclusive between the parties thereto, in the adjustment of either a partial or



total loss, if the insured has some interest at risk, and there is no fraud on his part; except that when a thing has been hypothecated, before its insurance, and without the knowledge of the person actually procuring the insurance, he may show the real value. But a valuation fraudulent in fact entitles the insurer to rescind the contract.

(a) *Partial Loss*.—A marine insurer is liable upon a partial loss, only for such proportion of the amount insured by him as the property lost bears to the value of the whole interest of the insured.

(b) *Profits*.—Where profits are separately insured the insured is entitled to recover, in case of loss, a proportion of such profits, equivalent to the proportion which the value of the property lost bears to the value of the whole.

(c) *Valuation Apportioned*.—In case of a valued policy on freightage or cargo, if a part only of the subject is exposed to risk, the valuation applies only in proportion to such part.

(d) *Valuation Applied to Profits*.—When profits are valued and insured in the policy, a loss of them is conclusively presumed from a loss of the property out of which they were expected to arise, and the valuation in the policy fixes their amount.

(e) *Estimating Loss Under an Open Policy*.—In estimating a loss under an open policy, where the values are not fixed by the contract, the following rules are to be observed: (1) The value of a ship is its value at the beginning of the risk, including all articles or charges which add to its permanent value, or which are necessary to prepare it for the voyage insured; (2) The value of cargo is its actual cost to the insured, when laden on board, or when that cost cannot be ascertained, its market value at the time and place of lading, adding the charges incurred in purchasing and placing it on board; but this

must be without reference to any losses incurred in raising money for its purchase, or any drawback on its exportation, or any fluctuations of the market at the port of destination, or any expenses incurred on the way or on arrival; (3) The value of freightage is the gross freightage, exclusive of primage, without reference to the cost of earning it; and (4) The cost of insurance is in each case to be added to the value thus estimated.

(f) *Arrival of Cargo Damaged*.—If cargo insured against partial loss arrives at the port of destination in a damaged condition, the loss of the insured is deemed to be the same proportion of the value which the market price at that port, of the goods damaged, bears to the market price they would have brought if sound.

(g) *Labor and Expenses*.—A marine insurer is liable for all the expense attendant upon a loss which forces the ship into port to be repaired; and where it is agreed that the insured may perform labor for the recovery of the property, the insurer is liable for the expense incurred thereby; such expense in either case being in addition to a total loss, if that afterwards occurs.

(h) *One-third New for Old*.—In case of a partial loss of a ship or its equipments, the old materials are to be applied towards payment for the new, when repairs are made; and whether the ship is new or old, a marine insurer is liable for only two-thirds of the remaining costs of the repairs, except that he must pay for anchors and cannon in full, and for sheathing metal at a depreciation of only two and one-half per cent for each month that it has been fastened to the ship.

Civil Code, Sections 2736, 2737, 2738, 2739, 2740, 2741, 2742, 2743, 2746.

Section 413.—GENERAL AVERAGE.—A carrier by water may, when in case of extreme peril it is necessary for the safety of the ship or cargo, throw overboard or otherwise sacrifice, any or all the cargo or appurtenances of

the ship. Throwing property overboard for such purpose is called jettison, and the loss incurred thereby is called a general average loss.

A jettison must begin with the most bulky and least valuable articles, so far as possible.

A jettison can be made only by authority of the master of the ship, except in case of his disability or an overruling necessity, when it may be made by any other person.

The loss incurred by a jettison, when lawfully made, must be borne in due proportions by all that part of the ship, appurtenances, freightage, and cargo, for the benefit of which the sacrifice is made, as well as by the owner of the property sacrificed. The proportions in which a general average loss is to be borne must be ascertained by an adjustment, in which the owner of each separate interest is to be charged with such proportion of the value of the thing lost as the value of his part of the property affected bears to the value of the whole. An adjustment made at the end of the voyage, if valid there, is valid everywhere.

In estimating values for the purpose of a general average, the ship and appurtenances must be valued as at the end of the voyage, the freightage at one-half the amount due on delivery, and the cargo as at the time and place of its discharge; adding, in each case, the amount made good by contribution.

The owner of things stowed on deck, in case of their jettison, is entitled to the benefit of a general average contribution only in case it is usual to stow such things on deck upon such voyage.

Where a person insured by a contract of marine insurance has a demand against others for a contribution, by reason of a general average, he may claim the whole loss from the insurance company, subrogating it to his own right to contribution. But no such claim can be made upon the insurer after the separation of the interests liable to contribution, nor when the insured, having the

right and opportunity to enforce contribution from others, has neglected or waived the exercise of that right.

Civil Code, Sections 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2745.

Section 414.—PERISHABLE GOODS.—What is known as the memorandum clause in policies of marine insurance, whereby the insurance company is exempted from liability for any partial loss of goods of a perishable nature, is intended to apply only where goods are perishable and there is difficulty in proving whether the loss occurred from the inherent quality of the goods or from a peril of the sea.

Section 415.—ACTS OF MASTER AND CREW.—The insurance company will be liable notwithstanding a lack of skill, or even negligence, on the part of the master or crew. To relieve the company from liability because of acts of the master or crew, there must be want of good faith and honesty of purpose on their part. If a ship should be run on shore by the crew and wrecked, through being placed in a dangerous position by reason of negligence or unskilfulness of the crew, this does not exempt the company from liability, where it appears that the crew were not acting in bad faith and with dishonest purpose to cause loss.

## BUILDING CONTRACTS

Section 416.—THE CONTRACT.—A building contract may be either oral or in writing, if the work is to be performed within a year. But as the lien law requires the recording of the original contract, in order to give actual notice of its terms to all persons who perform work upon or furnish materials for the structure, it may be said that a contract in writing is still essential.

Code of Civil Procedure, Section 1183.



Section 417.—RECORDING OF CONTRACT.—The contract must be recorded, if recorded at all, in the office of the County Recorder of the county where the property is situated, before the commencement of the work.

Code of Civil Procedure, Section 1183.

Section 418.—MATERIALS FURNISHED. CONTRACTOR EXEMPT FROM EXECUTION.—Materials furnished for use and about to be used in the construction, alteration, or repair of any building cannot be taken under attachment or execution, to enforce any debt due by the purchaser of such materials, except a debt due for the purchase price of the materials.

Code of Civil Procedure, Section 1196.

Section 419.—FORM OF BUILDER'S CONTRACT.—The following is a form of builder's contract, which is in common use in this state, and which meets the requirements of the law in its terms:

ARTICLES OF AGREEMENT, Made this.....  
day of....., 19....., Between.....

.....  
of the....., County of....., State of  
California, the party of the first part, and.....

.....  
of the....., County of....., State  
of California, the party of the second part.

Witnesseth:—That the party of the first part will be hereinafter designated as the Owner, and the party of the second part as the Contractor, singular number only being used; and the word Architect used herein in the singular shall include the plural, and the masculine the feminine.

FIRST.—The Contractor agrees, within the space of .....working days from and after the date hereof, to furnish the necessary labor and materials, including tools, implements, and appliances required, and perform and complete in a workmanlike manner all the  
.....  
.....

(Here insert description of work to be done, under the contract, whether woodwork, plastering, plumbing, iron-work, etc.)

.....  
 and other works shown and described in and by, and in conformity with, the plans, drawings, and specifications for the same made by....., the authorized Architect employed by the Owner, and which are signed by the parties hereto.

SECOND.—Said Architect shall provide and furnish to the Contractor all details and working drawings necessary to properly delineate said plans and specifications; and the work is to be done and the materials furnished in accordance therewith under the direction and supervision and subject to the approval of said Architect, or a Superintendent selected and agreed upon by the parties hereto, within a fair and equitable construction of the true intent and meaning of said plans and specifications.

THIRD.—The time during which the Contractor is delayed in said work by acts or neglects of the Owner or his employees, or those under him by contract or otherwise, or by the acts of God which the Contractor could not have reasonably foreseen and provided for, or by stormy and inclement weather which delays the work, or by any strikes, boycotts, or like obstructive action by employee or labor organizations, or by lock-outs or other defensive action by employers, whether general, or individual, or by organizations of employers, shall be added to the aforesaid time for completion.

FOURTH.—Said building .....

.....  
 to be erected upon a lot of land situated in ....., County of ....., State of California, and described as follows: .....

.....  
 (Here insert description of the lot of land.)  
 .....

FIFTH.—The Owner agrees, in consideration of the performance of this agreement by the Contractor, to pay, or cause to be paid to the Contractor, his legal representative or assigns, the sum of.....

(Here insert contract price.)

..... Dollars, in United States Gold Coin, at the times and in the manner following, to-wit: ..... Dollars when the foundation is completed and the framing materials on the ground and the frame up; ..... Dollars when the roof and rustic are on; ..... Dollars when the plastering is completed; and..... Dollars thirty-five days after the completion of the building and acceptance by the Owner; .....

(Here insert any other condition as to payment desired.)

Provided, that when each payment or installment shall become due, and in the final completion of the work, certificates in writing shall be obtained from the said Architect, stating that the payment or installment is due or work completed, as the case may be, and the amount then due; and the said Architect shall at said times deliver said certificates under his hand to the Contractor, or, in lieu of such certificates shall deliver to the contractor in writing under his hand, a just and true reason for not issuing the certificates, including a statement of the defects, if any, to be remedied, to entitle the Contractor to the certificate or certificates. And in the event of the failure of the Architect to furnish and deliver said certificates, or any of them, or in lieu thereof the writing aforesaid, within three days after the times aforesaid, and after demand therefor made in writing by the Contractor, the amount which may be claimed to be due by the Contractor, and stated in the said demand made by him for the certificate, shall, at the expiration of said three days, become due and payable, and the Owner shall be liable and bound to pay the same on demand.

In case the Architect delivers the writing aforesaid in lieu of the certificate, then a compliance by the Contractor

with the requirements of said writing shall entitle the Contractor to the certificate.

SIXTH.—For any delay on the part of the Owner in making any of the payments or installments provided for in this contract after they shall become due and payable, he shall be liable to the Contractor for any and all damages which the latter may suffer; and such delay shall, in addition, operate as an additional extension of the time for completion aforesaid for the length of time of such delay. And such delay, if for more than five days after the date when said payments or installments shall have respectively become due and payable, as in this agreement provided, shall, at the option of the Contractor, be held to be prevention by the Owner of performance of this contract by the Contractor.

SEVENTH.—The specifications and drawings are intended to co-operate, so that any work exhibited in the drawings and not mentioned in the specifications, or vice versa, are to be executed the same as if both mentioned in the specifications and set forth in the drawings, to the true intent and meaning of the said drawings and specifications when taken together. But no part of said specifications that is in conflict with any portion of this agreement, or that is not actually descriptive of the work to be done thereunder, or of the manner in which the said work is to be executed, shall be considered as any part of this agreement, but shall be utterly null and void.

EIGHTH.—Should the Owner or the Architect at any time during the progress of the work, request any alterations or deviations in, additions to, or omissions from, this contract, or the plans or specifications, either of them shall be at liberty to do so, and the same shall in no way affect or make void this contract; but the amount thereof shall be added to, or deducted from, the amount of the contract price aforesaid, as the case may be, by a fair and reasonable valuation. And this contract shall be held to be completed when the work is finished in accordance with the original plans, as amended by such changes, whatever may be the nature or extent thereof.

NINTH.—The rule of practice to be observed in the fulfilment of the last foregoing paragraph (eighth) shall



be that, upon the demand of either the Contractor, Owner, or Architect, the character and valuation of any or all changes, omissions, or extra work, shall be agreed upon and fixed in writing, signed by the Owner, Architect, and the Contractor, prior to execution.

TENTH.—Should any dispute arise between the Owner and Contractor, or between the Contractor and Architect, respecting the true construction of the drawings and specifications, the same shall, in the first instance, be decided by the Architect; but should either of the parties hereto be dissatisfied with the justice of such decision, or should any dispute arise between the parties hereto respecting the valuation of the extra work, work done, or work omitted, the disputed matter shall be referred to, and decided by, two competent persons who are experts in the business of building—one to be selected by the Owner or Architect, and the other by the Contractor; and, in case they cannot agree, these two shall select an umpire, and the decision of any two of them shall be binding on all parties.

ELEVENTH.—Should the Contractor fail to complete this contract, and the works provided for therein, within the time fixed for such completion, due allowance being made for the contingencies provided for herein, he shall become liable to the owner for all loss and damages which the latter may suffer on account thereof, but not to exceed the sum of \$.....per day for each day said work shall remain uncompleted beyond such time for completion.

TWELFTH.—In case said work herein provided for should, before completion, be wholly destroyed by fire, defective soil, earthquake, or other act of God which the Contractor could not have reasonably foreseen and provided for, then the loss occasioned thereby shall be sustained by the Owner to the extent that he has paid installments thereon, or that may be due under the fifth clause of this contract; and the loss occasioned thereby, and to be sustained by the Contractor, shall be for the uncompleted portion of said work upon which he may be engaged at the time of the loss, and for which no payment is yet due under said fifth clause of this contract.

In the event of a partial destruction of said work by any of the causes above named, then the loss to be sustained by the Owner shall be in the proportion that the amounts of installments paid or due bears to the total amount of work done and materials furnished, estimated according to said contract price, and the balance of said loss to be sustained by the Contractor.

THIRTEENTH.—The payment of the progress payments by the Owner shall not be construed as an absolute acceptance of the work done up to the time of such payments; but the entire work is to be subjected to inspection and approval of the Architect or Superintendent at the time when it shall be claimed by the Contractor that the contract and works are completed; but the Architect or Superintendent shall exercise all reasonable diligence in the discovery, and report to the Contractor, as the work progresses, of materials and labor which are not satisfactory to the Architect or Superintendent, so as to avoid unnecessary trouble and cost to the Contractor in making good defective parts.

FOURTEENTH.—Should the Contractor, at any time during the progress of the work, refuse or neglect, without the fault of the Owner, Architect, or Superintendent, to supply a sufficiency of materials or workmen to complete the contract within the time limited herein, or any lawful extension thereof, for a period of more than three days after having been notified by the Owner in writing to furnish the same, the Owner shall have power to furnish and provide said materials or workmen to finish the said work; and the reasonable expenses thereof shall be deducted from the amount of the contract price.

IN WITNESS WHEREOF, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

.....(Seal.)

.....(Seal.)

Section 420.—REFERENCE TO PLANS AND SPECIFICATIONS IN CONTRACT.—Where a building contract provides that the contractor shall do the work according to certain drawings and specifications, which are referred to in the

contract as "hereto annexed," the drawings and specifications are an essential part of the contract, and until they are annexed the contract is not complete; and it is essential that the drawings and specifications referred to in the contract should be filed in the Recorder's office, together with the contract, and a failure to file them may destroy the validity of the contract.

Section 421.—FAILURE TO FILE CONTRACT.—The failure to file the contract for record will not make the contract void. The filing of the contract for record gives actual notice of its terms to all, and limits lien claims to the labor or materials embraced within the terms of the original contract; but the contract will be valid, though not recorded at all.

Code of Civil Procedure, Section 1183.

Section 422.—CONTRACT OF MINOR.—A minor is not bound by his contract for the erection or repair of a building. A minor is only bound by his contracts in certain cases, which form exceptions to the general rule that minors cannot make contracts, in which the erection of a building is not included.

Section 423.—PRICE WHERE CONTRACTOR ABANDONS THE WORK.—If the contract for the erection and completion of a building is entire, and the contractor abandons the work before it is completed, he loses the right which he would have had to the full compensation agreed on.

Section 424.—OWNER PREVENTING WORK.—Where a contractor has proceeded to construct a building of the material and in the manner substantially as provided for in the contract, and the owner before completion of the contract, and without cause, and in violation of the contract, refuses to allow the contractor to go on, and takes possession of the building, and appropriates to his own use the materials on hand for the construction of the

building, the contractor is entitled to treat the contract as rescinded. And in other circumstances, where acts of similar character by the owner prevent the contractor from completing the work as agreed upon, the contractor may look upon the contract as rescinded. In all such cases, the contractor may recover from the owner the reasonable value of the work performed and material furnished by him.

Section 425.—ACCEPTANCE BY AGENT.—Where the parties to a building contract agree upon an agent, who is authorized to accept or reject the work when completed, his acceptance is binding upon both parties; and where the agent acts in good faith, and without practicing any fraud upon either party to the contract, his acceptance of the work is final and conclusive.

Section 426.—BREACH OF CONTRACT BY OWNER.—Where a contractor agrees to perform certain work and furnish certain materials for the construction of a building, and after furnishing a portion of the materials the owner of the building stops the work, and fails to receive any further material from the contractor, the owner is liable to the contractor in damages. The contractor may recover from the owner as damages all the profits he would have made if the work had gone on and the materials had been received from him.

Section 427.—AGREEMENT AS TO EXTRA WORK.—Where a building contract provides that "no extra work is to be paid for except by contract in writing," the parties may verbally rescind this provision, at any time, and agree to alterations. Where alterations are made by agreement, written or verbal, the original contract is not set aside, but is only modified to the extent of the change in the plans.

Section 428.—LOSS BY FIRE BEFORE COMPLETION.—Where, by the terms of a building contract, the third and last installments of payment for the work are conditioned



upon its completion according to agreement and specifications, such installments cannot be recovered where the whole work is consumed by fire, without apparent fault of either party, before its completion. A question will arise under such circumstances as to whether the building was substantially completed at the time of the fire. In a suit between a contractor and owner, at San Francisco, the Supreme Court of California decided that where it was proved that no part of the second coat of paint required by the contract had been put on; that the work bench of the carpenters and the paint for the second coat were in the building at the time of the fire; that two of the doors were unhung, and no fastenings put on the front door or windows; and that the house had not been delivered or accepted; the building was not substantially completed before the fire. (Decided by the Supreme Court of California in the case of *Clark vs. Collier*, which decision is printed in Volume 100 of the California Reports, page 256.) So many things were lacking in the case quoted, that it would have been surprising indeed if the Supreme Court had decided that the work was substantially performed; and in all cases the question, whether a contract has been substantially performed before a fire, will depend upon the terms of the contract and a reasonable consideration of the work done and remaining to be done.

Section 429.—CONTRACT PROVIDING FOR ARBITRATION.—Where a building contract provides for the arbitration of any matter, the contractor must first demand an arbitration before he can sue for his pay for the work included in the provision for arbitration. For instance, the contractor is not entitled to recover for extra work, or for materials furnished, when the contract provides that claims for such extras must be submitted to arbitration, and the contractor has made no offer or request to arbitrate. The contractor must offer in good faith to arbitrate, and if the owner refuses, he may then sue for

and recover the value of the extra work, regardless of the arbitration clause.

Section 430.—SUBSTANTIAL PERFORMANCE.—In certain cases, the contractor, although he has not completed the work literally as called for by the contract, yet may recover from the owner the contract price, less damages suffered by the owner from the contractor's failure to do the work as contracted for. But the contractor must show in such cases that the failure was not by his own fault; that he endeavored and intended in good faith to do the work exactly as contracted for; and he must also be able to show that the work has been in every material particular performed substantially in the manner called for by the contract. The contractor must have intended in good faith to comply with the terms of the contract. The spirit of the contract must be faithfully observed, though the very letter of it fail. Good faith alone, however, is not enough. The owner has a right to a structure in all essential particulars such as he has contracted for, and to authorize a court or jury to find that there has been a substantial performance, it must be found that he has such a structure. The court cannot say that anything is immaterial, which the parties have made material by their own agreement. The owner has a right to have the structure he contracted for, and not another; and even his caprices, if expressed in the contract, must be complied with, even though they do not add to the value of the building, or may have lessened its value. It is only where the plan has been substantially embodied in the work that the contractor will have a remedy for substantial performance. The omissions or deviations from the plans must be the result of a mistake or inadvertence, and not intentional, much less fraudulent; and they must be slight or susceptible of remedy, so that an allowance out of the contract price will give the owner substantially what he contracted for. Some of the things which will not be considered as substantial performance of a build-

ing contract are mentioned in the suit brought at San Francisco by Edward H. Perry against Thomas M. Quackenbush, and decided by the Supreme Court of California. The contractor agreed in the construction of the foundation to use good, hard brick and lay seven courses, and to construct twelve piers of brick laid in six courses. In violation of the agreement, he used old, second-hand brick of poor quality, that had been used in other buildings, and laid the same in courses of five and six instead of seven, and constructed only six piers of brick of the same kind laid in three courses. He agreed to use in the construction of the frame of said building the best kind of lumber; contrary to his agreement, he used only second-class lumber and second-hand and refuse lumber that had been used in other buildings. He agreed to use in the construction of the roof the best quality of shingles; contrary to his agreement, he used second-hand lumber and second-class shingles. He agreed to paint the building with two coats of metallic paint, but used no metallic paint at all, but cheap and inferior paint. The Supreme Court held that these facts showed that the contractor had in no sense substantially performed his agreement, but that he had intentionally and wilfully departed from it. (Decided by the Supreme Court of California in the case of Edward H. Perry vs. Thomas M. Quackenbush, which decision is printed in Volume 105 of the California Reports, page 299.)

Section 431.—RIGHT OF CONTRACTOR TO ABANDON WORK.—If the owner prevents the progress of the work, or fails to furnish materials with which the work can be done, where the owner is to furnish the material, or fails to pay an installment of the price when it becomes due, the contractor has the right to abandon the work and sue the owner for the reasonable value of his work and materials. The contractor has no right to leave the work without cause; and if, when he makes a demand for an installment of the price, he has not performed the con-

tract according to its terms, the installment is not legally due, and he will not be justified in leaving the work on the ground of non-payment.

Section 432.—**MATERIAL DEPARTURE FROM SPECIFICATIONS.**—A building contractor must stick close to the plans and specifications, and must make no changes or deviations without the consent of the owner. Any material departure from the plans and specifications by the contractor will render him liable to the owner in damages, and may give the owner the right to rescind the contract altogether. Where a building contract called for laths one and one-quarter inches wide, and laths one and one-half inches wide were used, and the contract called for No. 1 rustic and the best quality of joists and studding, and the contractor used second quality of joists and studding and No. 2 rustic, it has been decided by our Supreme Court that there was a substantial and material departure from the specifications of the contract.

Section 433.—**EXCAVATIONS.**—The question whether the owner of land will be liable in damages, for injury to adjoining property, caused by excavating, will depend in every case upon the manner of making the excavation. The owner of a lot in making excavations must use due care. If one by carelessness in making excavations on his own land causes injury to an adjoining building, even where the owner of the house has no easement of support, he will be liable for damages. The law exacts from a person who undertakes even a lawful act on his own premises from which injury might be apprehended to the property of his neighbor, the exercise of a degree of care measured by the danger, to prevent or lessen the injury. The general rule is, that no one has absolute freedom in the use of his property, but is restrained by the co-existence of equal rights of his neighbor to the use of his property, so that each in exercising his right must do no act which causes injury to his neighbor. But if the owner of



Section 434, page 375, add the following: All scaffolding or staging swung or suspended from an overhead support which is more than ten feet from the ground or floor, shall have a safety rail of wood, or other equally rigid material of sufficient strength. Such rail shall be properly secured and braced; such rail to rise at least forty-two inches above the floor or floors or main portions of such scaffolding or staging, and to extend along the entire length of the outside and ends thereof, and properly attached thereto; and such a scaffolding or staging shall be fastened so as to prevent the same from swaying from the building or structure, or place of work, where such scaffolding or staging is being used.—Act of the Legislature of California, approved May 18, 1921; in effect July 18, 1921.

Section 439, page 444, "Embezzlement by Contractor"—LAW UNCONSTITUTIONAL—The District Court of Appeal of California has declared this law to be unconstitutional and void, the reason being that its effect is to put a man in jail for debt. The court says that a statute that, in its practical operation, in effect declares that under any contract between the owner of property and a building contractor the payments that may be made to the latter shall not be absolutely his own to do with as he pleases, but shall be held by him in trust to pay debts due by him to certain preferred creditors, is unconstitutional in that it is an infringement upon the inalienable right of contract.

Any legislation that makes it a crime for one to use his own money for any purpose other than the payment of his debts is violative of section 15 of Article I of the constitution of this state, which expressly prohibits imprisonment for debt except in cases of fraud.

Decided by the California Court of Appeal in the case of *People vs. Holder*, which decision is printed in Vol. 35, page 326, California Appellate Decisions.



the land, in making excavations, performs the work in a proper and careful manner, he will not be liable for injury to the premises of an adjoining owner. He is required only to take reasonable precaution to sustain the land of the adjoining owner. The adjoining owner must also take precaution to sustain his own walls, after notice of the intended excavations. The party intending to make excavations must give notice to the adjoining owner. This notice may be verbal or written. The notice is not required to be in any particular form. In one case decided by the Supreme Court of California, it was held that the following notice was entirely sufficient: "Dear Madam: As we are about to excavate the premises on the southeast corner of Haight and Devisadero Streets, directly adjoining your lot, to a depth somewhat below your foundation, you are hereby notified to take the necessary measures to protect your property. Very respectfully, Cunningham Bros., Architects. For Christian Warneke." (Decided by the Supreme Court of California, in the case of Nippert vs. Warneke, which decision is reported in Volume 128 of the California Reports, page 501.)

Civil Code, Section 832.

Section 434.—UNSAFE SCAFFOLDING, LADDERS, ETC.—Any person or corporation employing or directing another to do or perform any labor in the construction, alteration, repairing, painting or cleaning of any house, building or structure within this state, who knowingly or negligently furnishes or erects or causes to be furnished or erected for performance of labor, unsafe or improper scaffolding, slings, hangers, blocks, pulleys, stays, braces, ladders, irons, ropes or other mechanical contrivances; or who hinders or obstructs any officer attempting to inspect the same; or who destroys, defaces, or removes any notice posted thereon by such officer; or who permits the use thereof, after the same has been declared unsafe by such officer, is guilty of a misdemeanor.

Act of the Legislature, approved March 13, 1909.

Section 435.—TEMPORARY FLOORING FOR PROTECTION OF WORKMEN.—Any building more than two stories high in the course of construction shall have the joists, beams or girders of each and every floor below the floor or level where any work is being done, or about to be done, covered with flooring laid close together, or with such other suitable material to protect workmen engaged in such building from falling through joists or girders, and from falling planks, bricks, rivets, tools, or any other substance whereby life and limb are endangered.

Such flooring shall not be removed until the same is replaced by the permanent flooring in such building.

It shall be the duty of the general contractor having charge of the erection of such building to provide for the flooring as herein required, or to make such arrangements as may be necessary with sub-contractors in order that the provisions of this act may be carried out.

It shall be the duty of the owner or the agent of the owner of such building to see that the general contractor or sub-contractors carry out the provisions of this act.

Should the general contractor or sub-contractors of such building fail to provide for the flooring of such building, as herein provided, then it shall be the duty of the owner or the agent of the owner of such building to see that the provisions of this act are carried out.

Failure upon the part of the owner, agent of the owner, general contractor, or sub-contractors to comply with the provisions of this act shall be deemed a misdemeanor and shall be punishable as such.

Act of the Legislature, approved April 26, 1911.

Section 436.—TENEMENT HOUSE ACT.—The Legislature in 1917 passed a law known as the State Tenement House Act, providing as follows:

SEC. 1.—This act shall be known as the “state tenement house act” and its provisions shall apply to all parts of the State of California, including incorporated towns, incorporated cities, and incorporated cities and counties.



Section 435, page 376, "Business Law for Business Men"—PROTECTION OF WORKMEN—Concrete buildings must have the floors filled in either with forms or concrete on each floor before the commencement of work upon the walls of the second floor above, or the commencement of work upon the floor of the next floor above.

If such building has a structural frame of iron or steel, the entire floor of every second story, except such space as may reasonably be required for the proper construction of such building, shall be thoroughly covered with planks tightly laid together, so that workmen shall have at all times planked floors within two stories below them.

If a span of a floor exceeds thirteen (13) feet, an intermediate beam shall be used to support the temporary flooring; **provided, however,** that spans not to exceed sixteen (16) feet may be covered by three (3) inch planks without such beam. Such intermediate beam shall be of a sufficient strength to sustain a live load of fifty (50) pounds per square foot of the area supported.

If the distance between planked floors in any building or structure exceeds twenty-five (25) feet, intermediate flooring or safety nets shall be provided which shall be fixed not to exceed twenty-five (25) feet below a floor upon which work is being performed and as close to such floor as practicable.

The erection gang shall at all times have a planked floor below them not more than two stories distant.

The riveting gang and steel painters shall at all times have a planked floor below them not more than two stories distant. Men working below riveting gangs shall at all times be protected from falling objects by having a planked floor between them and the riveting gangs.

If building operations are suspended and the temporary flooring, hereinbefore required, is removed, upon the resumption of work, in case of such suspension, the building must be replanked so that every man at work shall have a covered floor not more than two floors below.

Where a building is being constructed in sections each section shall constitute a building for the purpose of this act.

Where such building has a structural frame of iron or steel, and the iron or steel columns are spliced at every story, the erection gang shall in no case be more than two stories distant from the riveting gang. If the columns are spliced every second or third story, the erection gang shall in no case be more than four stories distant from the riveting gang.

Planked floors shall consist of planks tightly laid together of number one common lumber, not less than two inches thick and eight inches wide, free from protruding nails or other objects. Nets shall consist of at least one and one-half inch manila rope with three-quarter inch borders, and four by four inch mesh. The borders of the nets shall be provided with loops so that they can be readily combined or attached to convenient points on the structural frame.

No owner, agent of the owner, general contractor, contractor, sub-contractor, or other person, shall proceed with any work assigned to or undertaken by him, or require or permit any other person to proceed with work assigned to or undertaken by either, unless the planking or nets required by this act are in place. Violation of this section shall constitute a misdemeanor.

Act of the Legislature of California, approved May 18, 1921; in effect July 18, 1921.



(a) *Duty of Building Departments.*—Sec. 2. It shall be the duty of the “building department” of every incorporated town, incorporated city, and incorporated city and county, to enforce all the provisions of this act pertaining to the erection, construction, reconstruction, moving, conversion, alteration and arrangement of tenement houses and to issue the certificate of “final completion” hereinafter provided.

It shall be the duty of the “housing department” or if there is no housing department the health department of every incorporated town, incorporated city, and incorporated city and county to enforce all of the provisions of this act pertaining to the maintenance, sanitation, ventilation, use and occupancy of tenement houses after said tenement houses have been erected, constructed, or altered, as the case may be, and the certificate of “final completion” has been issued by the building department, and to issue the “permit of occupancy” as hereinafter provided.

In the event that there is no building department or no housing department or health department in an incorporated town, incorporated city or incorporated city and county, it shall be the duty of the officer or officers who are charged with the enforcement of ordinances and laws regulating the erection, construction or alteration of buildings, or the maintenance, sanitation, ventilation or occupancy of buildings, or of the police, fire or health regulations in said incorporated town, incorporated city or incorporated city and county to enforce all of the provisions of this act.

In every county it shall be the duty of the officer or officers who are charged with the enforcement of ordinances or laws regulating the erection, construction or alteration of buildings, or of the maintenance, sanitation, occupancy and ventilation of buildings, or of the police, fire or health regulations in said county, to enforce all of the provisions of this act outside of the limits of any incorporated town or incorporated city.

Every incorporated town, incorporated city, or incorporated city and county in the State of California shall have, and it is hereby empowered and given authority to designate and charge by ordinance any other department or officer than the department or officers mentioned herein, with the enforcement of this act, or any portion thereof.

(b) *Unlawful to Construct Tenement House Contrary to Act.*—Sec. 3. It shall be unlawful for any person, firm or corporation, whether as owner, agent, contractor, builder, architect, engineer, superintendent, foreman, plumber, tenant, lessee, lessor, occupant, or in any other capacity whatsoever, to erect, construct, reconstruct, alter, build upon, move, convert, use, occupy or maintain, or to cause, permit or suffer to be erected, constructed, reconstructed, altered, built upon, moved, converted, used, occupied or maintained any tenement house or any portion thereof contrary to the provisions of this act, or to commit or maintain or cause or permit to be committed or maintained any nuisance in or upon any tenement house or any portion thereof, or any of the premises, yards or courts which are a part thereof, or which are required by the provisions of this act; or to do or cause to be done, or to use or cause to be used, any privy, sewer, cesspool, plumbing or house drainage affecting the sanitary condition of any tenement house or any portion thereof, or of the premises thereof, contrary to any of the provisions of this act.

(c) *Alterations.*—Sec. 4. It shall be unlawful for any person to make any alterations or changes, or reconstruction work of any kind whatsoever, to any tenement house erected prior to the passage of this act, or to any tenement house hereafter erected, or to increase the height or the percentage of the lot occupied, in any manner which would be inconsistent with any of the provisions of this act, or in violation of the said provisions of this act, or in any manner to diminish the size of the yards, courts, or shafts or the size of windows or skylights, or to remove any stairway or fire escape, or to obstruct the



## TENEMENT HOUSES

Section 436, page 379, "Business Law for Business Men"—STATE HOUSING ACT—The law relating to the construction of tenement houses and dwellings will hereafter be known as the State Housing Act, and its provisions will hereafter be enforced by the Commission of Immigration and Housing of California.

(a) On page 394, sub-division (u), make the table for courts of tenement houses for five stories read: "5 stories, 6 ft., 6 in., 35 ft. 0 in." And strike out the lines for 9 stories and 10 stories.

(b) On page 395, sub-division (v), make the second table read: "2 stories, 5 ft. 60 square feet; 3 stories, 6 ft. 120 square feet; 4 stories, 7 ft. 175 square feet; 5 stories, 9 ft. 225 square feet; 6 stories, 12 ft. 360 square feet; 7 stories, 15 ft. 525 square feet; 8 stories or more, 18 ft. 630 square feet.

(c) On page 397, sub-division (a-a), in line 3 of said sub-division, change the words "eighteen inches" to "twelve inches."

On page 399, sub-division (b-b), in the second line of the last paragraph, make the words "thirty-six inches" read "thirty inches."

(d) On page 431, sub-division (kkk), add the following: In every tenement house or hotel hereafter erected, the studs in every bearing wall and partition shall be not less than two inches by four inches (2"x4") and in every such building that exceeds two (2) stories in height the studs in every bearing wall and partition below the second floor thereof shall be not less than two inches by six inches (2"x6") or the equivalent thereof. Every stud wall and partition shall have fire stops at each floor and ceiling and at approximately halfway between the floor and the ceiling, except that where two (2) inch plates are used the full width of the studs at the floor and ceiling of a wall or partition then the fire stops at the floor and ceiling may be omitted. Each stud wall and partition shall be diagonally braced at each corner and at least once in each twenty-five (25) foot length thereof, except where such exterior walls and partitions are plastered and back-plastered with Portland cement plaster on expanded metal lath reinforcement that weighs not less than three and four-tenths (3.4) pounds to the square yard. Every such partition or wall that is plastered and back-plastered shall be plastered not less than three-quarters ( $\frac{3}{4}$ ) of an inch thick and back-plastered between the studs not less than one-half ( $\frac{1}{2}$ ) of an inch thick in an approved manner so that the expanded metal lath will be thoroughly imbedded in the plaster. Over each bearing partition or wall and at the exterior walls, the space between the floor joists shall be blocked solid with blocks not less than two (2) inches thick and the full depth of the joists. No wooden floor joists less than two inches by eight inches (2"x8") shall be used to support any floor above the first floor of any such building and such floor joists shall not be spaced more than sixteen (16) inches apart. No span of such two inch by eight inch (2"x8") floor joist shall exceed fourteen (14) feet. All joists that span more than fourteen (14) feet or that otherwise vary from the foregoing dimensions or that support loads other than the live floor loads, shall be of such sizes as to safely sustain the loads transmitted thereto. No floor joist or other bearing support shall be cut or notched for any purpose unless reinforced to take up the weakness caused thereby. Every span of wooden floor joists shall be cross-bridged with two (2) inch cross-bridging at intervals not more than seven (7) feet apart, and a bearing partition, wall, girder or other support under such joists that is blocked solid over the top thereof between the joists as hereinbefore provided shall take the place of a cross-bridging.

Act of the Legislature of California, approved May 19, 1921; in effect July 19, 1921.



egress from such building or from the hallways or stairways, or to do anything that would affect the ventilation and sanitation of the building, contrary to any of the provisions of this act.

(d) *Building Converted to Use as Tenement House.*—

Sec. 5. A building not erected for, or which is not used as a tenement house at the time of the passage of this act, if hereafter converted to or altered for such use, shall hereupon become subject to all of the provisions of this act affecting tenement houses hereafter erected.

A building used as a tenement house at the time of the passage of this act, if moved, shall be made to conform to all of the provisions of this act affecting tenement houses hereafter erected, in so far as they pertain to the percentage of lot occupied and the size of outer courts, inner courts bounded by a lot line, and yards.

It shall be unlawful to reconstruct any tenement house which is hereafter damaged by fire or the elements to an extent in excess of fifty-one (51) per cent of its physical proportions, unless the said building is made to conform to all of the provisions of this act affecting tenement houses hereafter erected.

(e) *Penalty for Violation.*—Sec. 6. Any person, firm or corporation violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine not exceeding five hundred dollars, or by imprisonment in a county jail not exceeding six months, or by both such fine and imprisonment, and in addition to the penalty therefor, shall be liable for all costs, expense and disbursements paid or incurred by the department, by any of the officers thereof, or by any agent, employee or contractor of same, in the prosecution of such violation. The costs, expense and disbursements by this section provided shall be fixed by the court having jurisdiction of the matter.

(f) *Permit to Erect Tenement House.*—Sec. 7. In every incorporated town, incorporated city, and incorporated city and county, it shall be unlawful to commence

or to proceed with the erection, construction, reconstruction, conversion, or alteration of a tenement house, or to move or to build upon a tenement house, or to convert a building or any portion thereof into use as a tenement house, without first obtaining a permit in writing so to do from the department charged with the enforcement of this act. Any person, firm or corporation desiring such a permit shall file an application therefor with the department charged with the enforcement of this act. Said application shall give a detailed statement in writing, verified under oath by the person making the same, of the erection, construction, reconstruction, moving, conversion or alteration, as the case may be, upon blanks or forms to be furnished by the said department. The said application must be accompanied with a full, true and complete set of the plans of the tenement house or alteration, or work proposed, as the case may be, together with a set of specifications describing the materials proposed to enter into the construction of the proposed work, also a plan of the lot on which such building is proposed to be erected, constructed, reconstructed, converted, altered, or moved, as the case may be. Such statement shall give in full the name and address by street and number of the owner or owners, also the name and address of the architect and of the contractor, if there be such an architect or contractor; also shall give such other data and information as in the judgment of the department charged with the enforcement of this act is deemed necessary.

The affidavit to said application shall allege that the plans and specifications are true and contain a correct description of the proposed tenement house, lot and proposed work. If any person other than the owner makes such affidavit, such person shall not be recognized except that he allege in his affidavit that he is authorized and empowered by the said owner to act for him and to sign the required affidavit. Said department charged with the enforcement of this act shall cause all such plans, specifications and statements to be examined, and if it appears



that they conform to the provisions of this act, shall then issue a permit to the person submitting the same. Said departments may, from time to time, approve changes in any plans, specifications or statements previously approved by it; *provided*, that all changes when so made shall be in conformity with the provisions of this act. Said department shall have the power to revoke or cancel any permit or approval that it has previously issued in case of any refusal, failure or neglect of the person to whom such permit or approval has been issued to comply with any of the provisions of this act, or in case any false statement or misrepresentation is made in any of the said plans, specifications or statements submitted or filed for such permit or approval. The erection, construction, reconstruction, moving, alteration or conversion of any such tenement house, as the case may be, shall be made in accordance with the plans, specifications and statements submitted or filed and for which the permit is issued.

A true copy of the plans, specifications and other information submitted or filed, upon which a permit is issued, with the approval of the department with which they are filed, stamped or written thereon shall be kept upon the premises of the tenement house or work for which the said permit is issued, from the commencement of the said building or work to the final completion of same, and shall be subject to inspection at all times by proper authorities.

The department charged with the enforcement of this act may, at its discretion, issue a permit in case of nominal alterations or repairs, when application is made therefor, in writing, by the owner or his agent, when the making of said nominal alterations and repairs do not affect any structural feature or the sanitation or the ventilation of the tenement house, without requiring the filing of plans or specifications.

The issuance or granting of a permit or approval by the department charged with the enforcement of this act under the authority of this section shall not be deemed or

construed to be a permit or an approval of the violation of any of the provisions of this act.

Every permit or approval which is issued by the department charged with the enforcement of this act, but under which no work has been done within ninety days from the date of issuance, or where work has been suspended for a period of ninety days, shall expire by limitation and a new permit shall be obtained before the work may be done.

(g) "*Certificate of Final Completion*" and "*Permit of Occupancy*."—Sec. 8. In every incorporated town, incorporated city and county, it shall be unlawful to occupy or to permit to be occupied, any tenement house hereafter erected, constructed, reconstructed, altered, converted or moved, as the case may be, or any portion thereof, for human habitation until the issuance of a "certificate of final completion" and a "permit of occupancy" by the department or departments charged with the enforcement of this act.

It shall also be unlawful to occupy any existing tenement house until a permit of occupancy has been issued by the department designated to issue such permit.

Every permit of occupancy shall be renewed each calendar year by the department designated to issue the said permit; *provided*, that no structural alterations or changes have occurred since the issuance of the certificate of final completion; *and provided*, that all other provisions of this act have been complied with.

Any person desiring a certificate shall file a notice with the department charged with the enforcement of this act. Said department shall cause an inspection to be made of the said tenement house or portion thereof, or work described in the said notice, within ten days after written application therefor, and shall issue a "certificate of final completion" if it is found that all the provisions of this act, regulating the erection, construction, alteration or moving, as the case may be, have been complied with.

The department charged with the enforcement of this act and designated to issue the permit of occupancy shall issue the said "permit of occupancy" upon application, in writing, therefor by the owner or his agent, and upon the filing by the owner or his agent of such statements or records required by the department, after the "certificate of final completion" has been issued; *provided*, that no violations have occurred since the issuance of the certificate of final completion, or, in the case of a tenement house erected prior to the passage of this act, and for which no certificate of final completion has been issued, then after the said department has caused an inspection to have been made of the said tenement house and has found that all of the provisions of this act applying to such tenement house have been complied with.

All permits and certificates shall be made in duplicate and a copy shall remain on file in the department issuing them.

Any tenement house hereafter erected, altered, converted or moved, which is occupied, or any portion thereof which is occupied for human habitation, prior to a "certificate of final completion" or a "permit of occupancy," being issued, shall be deemed a nuisance, and the department or departments charged with the enforcement of this act may cause it to be vacated until the said certificate of completion and permit of occupancy have been obtained in accordance with the provisions of this act.

(h) *Power to Enter Tenement House*.—Sec. 9. The department or departments charged with the enforcement of this act in any incorporated town, incorporated city, incorporated city and county, or county, and the authorized officers, agents or employees of such department or departments, may, whenever necessary, enter tenement houses or portions thereof, or the premises thereof, within the corporate limits of such towns, either cities and counties, or counties, for the purpose of inspecting such buildings, in order to secure compliance

with the provisions of this act and to prevent violations thereof.

The members of the commission of immigration and housing of California and the agents, officers or employees of said commission may, whenever necessary, enter tenement houses or portions thereof, or the premises thereof, for the purpose of inspecting such buildings in order to secure compliance with the provisions of this act and to prevent violations thereof.

The owner or his authorized agent may, whenever necessary, enter tenement houses, or portions thereof, or the premises thereof, owned by him, to carry out any instructions or to perform any work required to be done by the provisions of this act.

(i) *Definitions*.—Sec. 10. For the purpose of this act, certain words and phrases are defined as follows, unless it shall be apparent from their context that they have a different meaning:

“Apartment” is a room or suite of rooms which is occupied, or is intended or designed to be occupied, by one family for living and sleeping purposes.

“Basement” is any story or portion thereof partly below the level of the curb or the actual adjoining ground level, the ceiling of which in no part is less than seven feet above the curb level or actual adjoining ground levels. If the adjoining ground is excavated to or below the curb level, or to or below the adjoining natural ground level, such excavated space shall have not less than the minimum width and length required in this act for outer courts.

Every basement is a story.

“Cellar” is any story or portion thereof, the ceiling of which in any part is less than seven feet above the curb level and actual adjoining ground levels.

“Court” is an open, unoccupied space other than a yard on the lot on which is situated a tenement house. A court, one entire side or end of which is bounded by a front yard, a rear yard or a side yard, or by the front of



lot, or by a street or a public alley, is an "outer court." Every court which is not an "outer court" is an "inner court."

Every court shall be open and unobstructed to the sky from a point not more than two feet above the floor line of the lowest story in the building in which there are windows from rooms or apartments, abutting the said court, except that a cornice on the building may extend into an "outer court" two inches for each one foot in width of such court, and a cornice may extend into an "inner court" one inch for each one foot in width of such court.

"Curb level" is the curb level opposite the center of the "front of lot."

"Family" is one person living alone or a group of two or more persons living together in an apartment, whether related to each other by birth or not.

"Fireproof tenement house" is a building wherein all the exterior and interior loads or strains are transmitted to the foundation by means of concrete, reinforced concrete, brick, stone, or by means of a skeleton framework of steel or iron, the exterior walls, inner court walls and roof constructed of concrete, reinforced concrete, brick, stone or hollow terra cotta tile; where all the structural steel or iron is thoroughly fireproofed by concrete, cement plaster, tile, brick or sandstone, not less than two inches thick; where all the interior partitions are constructed of either hollow terra cotta tile blocks, gypsum blocks, brick, concrete, reinforced concrete, or of metal studs lathed with metal lath and plastered not less than three-quarters inch thick including the lath, or of metal studs lathed with approved plaster board and plastered not less than three-quarters inch thick including the plaster board, or constructed of wire glass not less than one-fourth inch thick, set in metal frames and sash, and all other materials used in the said building are of approved incombustible material, except that the glass in windows, transoms, or doors may be plain glass, and except that doors, frames, sash and the usual trim of rooms, hallways,

corridors and passageways may be of wood, and except that wood floors may be placed on top of the floors constructed of incombustible materials, except in the stairways and public hallways.

"Kitchen" is any room in any apartment used or intended or designed to be used for cooking purposes and for the preparation of food.

"Lot" is a parcel or area of land on which is situated a tenement house, together with the land, yards, courts and unoccupied spaces for such a tenement house as required by this act; all of which land shall be owned by or be under the absolute lawful control and in the lawful possession of the tenement house.

A lot situated at the junction of two or more intersecting streets, with a boundary line thereof bordering on each of the two streets, is a "corner lot." All parts of the width of such a corner lot which are distant more than seventy-five feet from the junction point of the two or more intersecting streets, shall be deemed to be an "interior lot." The owner or his authorized agent may designate either street frontage as being the front of such corner lot for the purpose of determining the width thereof.

A lot which has only one boundary line bordering on a public street is an "interior lot."

"Rear lot" is a parcel or area of land having no boundary line bordering on a street, or having less than one-half of its width as a boundary line bordering on a street.

"Front of lot" is the boundary line of lot bordering on the street. In case of a corner lot, either of such boundary lines may be the "front of lot."

"Rear of lot" is the boundary line of lot opposite from the "front of lot."

"Depth of lot" is the mean distance from the "front of lot" to the "rear of lot."

"Nuisance" embraces public nuisance as known at common law or in equity jurisprudence, and whatever is

dangerous to human life or detrimental to health, and shall also embrace the overcrowding with occupants of any room, insufficient ventilation, or illumination, or inadequate or unsanitary sewerage or plumbing facilities, or uncleanness, and whatever renders air, food or drink unwholesome or detrimental to the health of human beings.

“Occupied space” is all the space covered by a tenement house, including outside stairways, platforms, fire escapes, balconies, fire towers, chimneys, stacks, vent shafts, not exceeding thirty-two square feet in area, cornice, or any part thereof, which projects into an inner court more than one inch for each one foot in width of such court, or which projects into an outer court or yard more than two inches for each one foot in width of such outer court or a yard, except that outside stairways, platforms and balconies constructed of open metal work and fire escapes may extend not exceeding four feet beyond the exterior walls of the building into a front or rear yard, and except that a retaining wall may extend not to exceed twelve inches into a yard or court. For the purpose of determining occupied space, the area of the building shall be taken at the lowest story or portion thereof used for living or sleeping purposes.

“Public hallway” is a hallway, corridor, passageway or vestibule not within an apartment, and includes stairways, landings and platforms.

“Rear tenement house” is a tenement house on a “rear lot.”

“Semifireproof tenement house” is a building with all exterior walls and walls of inner and outer courts constructed of brick, stone, concrete, reinforced concrete or hollow terra cotta tile; except that the walls of an inner court, which court is surrounded on four sides by the same building, may be constructed as provided in this act for such inner courts; interior partitions and floors constructed of approved incombustible materials or of wood, with all ceilings, partitions, soffits of stairways, and out-

side stringers of open stairways and stair wells metal lathed and plastered not less than three-quarters inch thick including the lath or lathed with an approved plaster board plastered not less than three-quarters inch thick including the plaster board; in which all finished floors, frames, doors and the usual trim of rooms and hallways may be built of wood and the roof of which shall be covered with at least a composition fire-retardant material.

“Street” is any public street, alley, thoroughfare or park having a minimum width of sixteen feet, measured from the “front of lot” to the opposite “front of lot,” and which shall have been dedicated or deeded to the public for public use.

“Tenement house” is any house or building, or portion thereof, more than one story in height, which is designed, built, rented, leased, let or hired out to be occupied, or which is occupied as the home or residence of three or more families living independently of each other and doing their cooking in the said building; *provided, however,* that any building not more than two stories in height which is designed, built, rented, leased, let or hired out to be occupied, or is occupied, as the home or residence of not more than four families, and the said building is so arranged that each of the said families live independently of each other, and the building is constructed and arranged so that a separate section is, or may be, kept as a home or residence of a separate family, and each such section has an entirely independent and separate entrance, and if a stairway is required, one such stairway leading to each section from the street or from an outside vestibule on the level of the first floor of said building is a separate stairway, and with no room, hallway, bathroom, water-closet, or kitchen used in common by two or more families occupying the said building, shall be deemed not to come within the definition of a “tenement house.”

“Wooden tenement house” is a building which does not fully comply with the requirements for a “fireproof” or a “semifireproof” tenement house as defined in this



act, and shall include all frame and all veneered buildings.

In every such building all ceilings and walls and partitions of public hallways, soffits of interior stairways and the outside stringers of open stairways, and stair wells shall be metal lathed and plastered not less than three-quarters inch thick including the lath, or lathed with an approved plaster board plastered not less than three-quarters inch thick including the plaster board.

“Yard” is a portion of a lot on which is situated a tenement house and which is unoccupied by the building and extends from the ground up (except where otherwise provided by this act) open and unobstructed to the sky; except that outside stairways, platforms and balconies constructed of open metal work and fire escapes may extend not more than four feet into such yards. If such yard is between the front line of the building and the front boundary line of the lot, it is a “front yard.” If it is between the extreme rear line of the building and the rear of the lot, it is a “rear yard.” If it extends from the rear yard to the front yard or front of the lot, it is a “side yard.”

(j) *Front Yard*.—Sec. 11. No tenement house shall hereafter be erected on, or moved on to, a rear lot. No building for any purpose shall hereafter be erected in front of any tenement house unless there shall be left unoccupied a front yard extending from the front of the rear tenement house to the front line of lot bordering on the street.

Such front yard shall not be in any part less in width than fifty per cent of the actual width of the rear tenement house.

(k) *Height*.—Sec. 12. No fireproof tenement house hereafter erected shall exceed one hundred fifty feet in height, nor more than one and one-half times the width of the widest street to which the lot on which it is situated abuts.

No semifireproof tenement house hereafter erected shall exceed six stories at any point, nor more than sixty-

five feet in height (except as hereinafter provided), nor more than one and one-half times the width of the widest street to which the lot on which it is situated abuts.

No wooden tenement house hereafter erected shall exceed three stories at any point nor more than thirty-six feet in height (except as hereinafter provided), nor more than one and one-half times the width of the widest street to which the lot on which it is situated abuts.

The width of the street, for this purpose, shall be measured from the extreme front of the building to the front of lot opposite, across the street.

For the purposes of this section a basement is a story.

The height of a fireproof tenement house is the perpendicular distance from the curb level or adjoining ground levels to the highest point of the roof. The height of a semifireproof or of a wooden tenement house is the perpendicular distance from the curb level or adjoining ground levels to the lowest point of the finished ceiling of the top story; *provided*, that in the case of a semifireproof tenement house situated on a lot with the ground sloping downward from the facade at which the measurement is taken the height of the building shall not at any point exceed sixty-five feet above the curb level measured on the facade facing the street, nor shall the height of the building at any point of the grade exceed seventy-five feet above the adjoining curb in case of a corner lot, or above the level of the ground in the case of an interior lot, and in the case of a wooden tenement house situated on a lot with the ground sloping downward from the facade at which the measurement is taken the height of the building shall not at any point exceed thirty-six feet above the curb line measured on the facade facing the street, nor shall the height of the building at any point of the grade exceed forty-six feet above the adjoining curb in the case of a corner lot or above the level of the ground in the case of an interior lot.

SEC. 13. (1)—PER CENT OF LOT LEFT UNOCCUPIED.—On every corner lot on which a tenement house is here-

after erected, at least ten per cent of such lot shall be left unoccupied; *provided*, however, that if such corner lot extends through from one street to another street, one-half of the narrowest street to which said lot abuts may be considered as a part of the lot in computing the percentage of lot to be left unoccupied; except that if such one-half of the narrowest street is greater than the rear yard required for such tenement house, then only as much of the said street as is required for the rear yard shall be considered as part of the lot for the purpose of computing the percentage of lot to be left unoccupied.

On every interior lot on which a tenement house is hereafter erected, at least twenty-five per cent of such lot shall be left unoccupied; *provided*, however, that if such interior lot extends through from one street to another street, one-half of the narrowest street to which such lot abuts may be considered as a part of the lot in computing the percentage of lot to be left unoccupied; except that if such one-half of the narrowest street is greater than the rear yard required for such tenement house, then only as much of the said street as is required for the rear yard shall be considered as part of the lot for the purpose of computing the percentage of lot to be left unoccupied.

(m) *Rear Yard*.—Sec. 14. Immediately behind every tenement house hereafter erected there shall be a rear yard extending across the entire width of the lot.

(n) *Yard Serving Two Tenement Houses*.—Sec. 15. In no event shall any yard or court be made to serve the purpose of two tenement houses hereafter erected, or of an existing tenement house and a tenement house hereafter erected, unless such yard or court, as the case may be, is of the full size required for two tenement houses, and then only in the event that such yard or court, as the case may be, is located on the same lot and owned by or in the absolute lawful control and in the lawful possession of the tenement house it proposes to serve.

Where a tenement house, now or hereafter erected, stands upon a lot, no other building shall hereafter be

placed upon the front or rear of that lot, unless the minimum distance between such buildings shall be at least ten feet, and two additional feet shall be added to such minimum distance of ten feet for every story more than one in height of the highest building on such lot.

(o) *Depth of Rear Yard.*—Sec. 16. The depth of a rear yard shall be measured at right angles from the extreme rear line of the building towards the rear lot line.

(p) *Minimum Depth of Rear Yard on Interior Lot.*—Sec. 17. On every interior lot on which a tenement house is hereafter erected there shall be provided a rear yard. Such yard shall extend from the ground clear and unobstructed to the sky, and shall extend across the entire width of the lot; except that outside stairways, platforms and balconies constructed of open metal work and fire escapes may extend not more than four feet into such yard. The minimum depth of such rear yard shall be as follows:

Height of building measured from top of wall to floor of yard at point abutting the rear yard.	Depth of rear yard.
Not exceeding 36 feet.....	10 feet
Not exceeding 48 feet.....	11 feet
Not exceeding 60 feet.....	12 feet
Not exceeding 72 feet.....	14 feet
Not exceeding 84 feet.....	16 feet
Not exceeding 96 feet.....	18 feet
Not exceeding 108 feet.....	20 feet
Not exceeding 120 feet.....	22 feet
Not exceeding 132 feet.....	24 feet
Not exceeding 150 feet.....	26 feet

*Provided, however, that if such interior lot extends through from one street to another street or public alley, one-half of the narrowest street or public alley to which*



said lot abuts may be considered as a part of the lot in computing the rear yard required by this section.

(q) *Minimum Depth of Rear Yard on Corner Lot.*—

Sec. 18. On every corner lot on which a tenement house is hereafter erected there shall be provided a rear yard. Such yard shall extend from the lowest floor which is used for living or sleeping apartments, clear and unobstructed to the sky, and shall extend across the entire width of such lot; except that outside stairways, platforms and balconies constructed of open metal work and fire escapes may be extended not more than four feet into such yard. The minimum depth of such rear yard shall be as follows:

Depth of corner lot.	Depth of rear yard.
Not exceeding 100 feet.....	Not less than 10 per cent of the depth of the lot nor less than 5 feet, nor less than the minimum width required for an outer court, based on the number of stories in such building.
Exceeding 100 feet .....	Not less than 10 feet nor less than the minimum width required for an outer court, based on the number of stories in such building.

*Provided, however,* if such corner lot extends through from one street to another street, or to a public alley, one-half of the narrowest street or public alley to which such lot abuts may be considered as a part of the lot in computing the rear yard required by this section.

(r) *Passageway to Street.*—Sec. 19. Every rear yard required by this act and not bordering on a street or public alley and without direct access thereto shall have access to a street or public alley by means of an unobstructed passageway not less than three feet six inches in clear width, nor less than seven feet in clear height; and if such passageway or any portion thereof passes through a building, such portion thereof shall be built of approved incombustible materials, or shall be lathed with metal lath or approved plaster board and be plastered not less than three-quarters inch thick including the lath or plaster board, or shall be lined with not less than number twenty-

six (gauge) galvanized iron, and shall be drained and lighted.

(s) *Excavated Front Yard*.—Sec. 20. Every front yard which is excavated below the level of a curb or below the adjoining ground level for the purpose of furnishing light and ventilation to a basement shall in no part be less in width and length than required for outer courts.

(t) *Width of Side Yard*.—Sec. 21. The width of every side yard shall be not less than the width required for an outer court except that the provisions of this act regarding the maximum lengths of an outer court shall not apply to a side yard; *provided*, that if there is a side yard on both sides of the building, connected one with the other across the rear of the building by the rear yard, then the width of the side yards may be reduced twelve inches.

(u) *Minimum Size of Outer Court*.—Sec. 22. The minimum size of every outer court for a tenement house hereafter erected shall be as follows:

Height of building based on the full number of stories in the building measured upward from and including the lowest story in which there is an apartment or apartments.	Minimum width of court.	Maximum length of court.
1 story .....	4 ft. 0 in.	16 ft. 0 in.
2 stories .....	4 ft. 0 in.	16 ft. 0 in.
3 stories .....	4 ft. 6 in.	25 ft. 0 in.
4 stories .....	5 ft. 6 in.	30 ft. 0 in.
5 stories .....	6 ft. 0 in.	35 ft. 0 in.
6 stories .....	8 ft. 0 in.	35 ft. 0 in.
7 stories .....	10 ft. 0 in.	40 ft. 0 in.
8 stories .....	12 ft. 0 in.	40 ft. 0 in.
9 stories .....	13 ft. 0 in.	40 ft. 0 in.
10 or more stories.....	14 ft. 0 in.	40 ft. 0 in.

There shall be added to the minimum width of each such outer court six inches for each five feet or fractional part thereof in excess of the maximum length; *provided*, *however*, that the maximum lengths herein provided shall not apply when the outer court is bounded on one side for its entire length by a lot line; *provided*, *further*, that if an outer court is bounded by a public alley or public park, the width of such public alley or public park may be considered a part of the lot in determining the required width of the outer court.

(v) *Minimum Size of Inner Court.*—Sec. 23. The minimum size of every inner court for tenement houses hereafter erected shall be as follows :

Height of building based on the full number of stories in the building measured upward from and including the lowest story in which there is an apartment or apartments.	Minimum width of court	Minimum area of court in square feet.
1 story .....	6 ft. 0 in.	75 square feet
2 stories .....	6 ft. 0 in.	75 square feet
3 stories .....	7 ft. 0 in.	120 square feet
4 stories .....	8 ft. 0 in.	160 square feet
5 stories .....	12 ft. 0 in.	250 square feet
6 stories .....	16 ft. 0 in.	400 square feet
7 stories .....	20 ft. 0 in.	625 square feet
8 stories and more.....	24 ft. 0 in.	840 square feet

*Provided, however,* that the minimum size of every inner court which is bounded on one side for its entire length by a lot line may be as follows :

Height of building based on the full number of stories in the building measured upward from and including the lowest story in which there is an apartment or apartments.	Minimum width of court	Minimum area of court.
1 story .....	5 ft. 0 in.	75 square feet
2 stories .....	5 ft. 0 in.	75 square feet
3 stories .....	6 ft. 0 in.	120 square feet
4 stories .....	7 ft. 0 in.	160 square feet
5 stories .....	9 ft. 0 in.	250 square feet
6 stories .....	16 ft. 0 in.	400 square feet
7 stories .....	20 ft. 0 in.	625 square feet
8 stories and more.....	24 ft. 0 in.	840 square feet

Every inner court hereafter constructed and every inner court or vent shaft now in any tenement house shall be provided with a door or window at or near the bottom thereof, giving sufficient access to such court or vent shaft as to enable it to be properly cleaned out.

(w) *Recess.*—Sec. 24. Every recess from a court, yard or street in a tenement house hereafter erected shall, unless it conforms to the requirements of this act for an inner court, or an outer court, be not less in width than its depth. Every such recess shall be open and unobstructed to the sky from a point not more than two feet

above the floor line of the lowest story in the building in which there are rooms the said recess proposes to serve.

(x) *Intakes for Inner Court.*—Sec. 25. Every inner court in a tenement house hereafter erected shall be provided with one or more horizontal intakes at the bottom of the court, as follows:

Inner court areas.	Minimum number of intakes.	Net aggregate area of intakes.
Each not exceeding 300 square feet.....	One	19½ square feet
Each not exceeding 800 square feet.....	Two	40 square feet
Each exceeding 800 square feet.....	Two	60 square feet

Every such intake shall always extend directly to the front of lot or front yard, or rear yard, or to a side yard, or to a street, or to a public alley or public park. Whenever more than one intake is required, one such intake shall extend to the front of lot or front yard, and one to the rear yard, public alley, public park, or to the other street, and the court ends of the air intakes shall be as far apart as possible.

Each such intake shall consist of an unobstructed duct or passageway having a minimum width of three feet in all its parts and a minimum height of six feet six inches.

Every such intake shall be constructed of approved incombustible materials, or shall be lined with at least number twenty-six (gauge) galvanized iron on the inside thereof. Such air intakes may be closed at each end with a gate or grill having not less than seventy-five per cent of open work.

In case the inner court does not extend below the second floor level, then each such air intake may consist of an unobstructed open duct, constructed of approved incombustible materials or lined with at least number twenty-six (gauge) galvanized iron on the inside thereof, having an interior area of not less than nineteen and one-half square feet, and in no dimension less than twelve inches, and covered at each end with a wire screen of not less than one inch mesh.



Every air intake shall be drained and so constructed and arranged as to be readily cleaned out.

(y) *Cellars*.—Sec. 26. In no tenement house shall any room in the cellar be constructed, altered, converted or occupied for living or sleeping purposes.

Every cellar shall be illuminated and ventilated. The walls and floor of every cellar hereafter constructed, which are below the ground level, shall be made waterproof and dampproof, and whenever deemed necessary, and so ordered by the department charged with the enforcement of this act, the walls and ceilings thereof shall be plastered.

(z) *Basements*.—Sec. 27. In no tenement house shall any room in the basement be constructed, altered, converted or occupied for living or sleeping purposes, unless such room conforms to all of the requirements of this act for rooms in other parts of the building and that the ceiling of each such room be in all parts not less than seven feet above the adjoining ground level.

Every basement shall be illuminated and ventilated. The walls and floors of every basement hereafter constructed, which are below the ground level, shall be made waterproof and dampproof, and whenever deemed necessary, and so ordered by the department charged with the enforcement of this act, the walls and ceilings thereof shall be plastered.

(aa) *Ventilation Beneath Floor*.—Sec. 28. In every tenement house hereafter erected, the lowest floor thereof shall be at least eighteen inches above the surface soil adjoining and under the floor, and the entire space under such floor shall be kept dry, drained, clean and free from any accumulation of rubbish, debris or filth.

Such space under the floor shall be enclosed and provided with a sufficient number of openings with removable screens or similar provisions of a size to insure ample ventilation; *provided, however*, that in any such building the lowest floor thereof may be less than eighteen inches above the surface soil, but in no case less than six

inches, except where masonry floors are laid directly on the soil, if the said floor is made impervious to the ingress of rats or other vermin as follows:

(a) Foundation walls shall be constructed of concrete or of brick or stone or other masonry laid in a good mortar or constructed of some other equally as rat proof material.

(b) The said foundation walls shall be not less than six inches in thickness at the top nor less than twelve inches in thickness at the bottom, nor extend less than twelve inches below the surface soil, and, except where masonry floors are laid directly on the soil, shall extend not less than six inches above the surface soil.

(c) Every opening in the foundation walls, for ventilation or for other purposes, shall be made rat proof with suitable metal screens or with some other similar rat proof material. Door or window openings in such walls shall have tight fitting doors or windows.

(d) The said lowest floor or differing levels thereof, forming a complete floor between the outside walls of the building, shall be constructed either of masonry, or covered with concrete not less than one and one-half inches thick, or constructed of two layers of flooring with a layer of galvanized iron or galvanized iron wire cloth or other approved equally as rat proof material placed between the two layers of flooring. Or, in lieu of the floor being constructed as herein prescribed, the entire ground area under the floor shall be covered with concrete not less than two inches thick, except where the surface of the soil is composed of rock. The rat-proofing material shall always extend under the plates of the exterior walls and supporting partitions.

(e) All openings throughout the said floor for chimneys, plumbing, water pipes, or for any other purpose, shall be closed up tight in the same manner and with the same kind of materials as required under the plates of the exterior walls and supporting partitions, and if the

rat-proofing material used for closing of openings is other than masonry, it shall extend beyond and underlap the flooring all around the opening, not less than two inches.

(bb) *Floor Area of Rooms*.—Sec. 29. In every apartment in every tenement house hereafter erected there shall be at least one room containing not less than one hundred twenty square feet of superficial floor area, and every other room shall contain at least ninety square feet of superficial floor area, except water-closet, bath or slop-sink compartments, and except kitchens, closets, recesses from rooms, or dressing rooms.

Every kitchen shall contain not less than fifty square feet of superficial floor area.

Every room shall at every point be not less than seven feet in width, nor less than nine feet in height, measured from the finished floor to the finished ceiling; except that attic rooms and rooms where sloping ceilings occur need be nine feet in height in but one-half the area of the room; *provided, however*, that the provisions of this paragraph shall not apply to water-closet, bath or slop-sink compartments, nor to closets, nor to recesses from rooms, nor to dressing rooms, nor shall the provisions of this paragraph as to minimum width apply to kitchens.

Every water-closet compartment shall be not less than thirty-six inches in clear width, and every such water-closet compartment, bath or slop-sink compartment, or closet, or recess from a room, or dressing room, shall have a height of not less than seven feet six inches, measured from the finished floor to the finished ceiling. Every closet, recess from a room, or dressing room, which contains more than twenty-five square feet of superficial floor area (built-in dressers, clothes presses and similar features which are a substantial part of the structure shall not be deemed to be a part of the floor area of a closet, recess from a room) or dressing room shall conform to all of the provisions of this act as to rooms, and shall contain not less than ninety square feet of superficial floor area.

No part of any room in any tenement house shall hereafter be enclosed or subdivided wholly, or in part, by a curtain, portiere, fixed or movable partition, or other contrivance or device, for any purpose contrary to any of the provisions of this act.

Entertainment, amusement or reception rooms hereafter constructed, altered or converted in any tenement house shall conform to the provisions of section thirty-three of this act.

(cc) *Windows*.—Sec. 30. In every tenement house hereafter erected every room, kitchen, and every water-closet compartment, toilet or shower room, and bath or slop-sink room (except in the cellar) shall have at least one window of the area hereinafter required opening directly upon a street, or upon a yard or court, of the dimensions specified in this act and located on the same lot.

All windows required by this act shall be located so as to properly light all portions of the rooms, and shall be made so as to open in all parts and so arranged that at least one-half of each such window may be opened unobstructed; *provided, however*, that the windows required by this section in a water-closet compartment, toilet or shower room, and bath or slop-sink room, may open directly into a vent shaft, such vent shaft to be of the minimum size and constructed of the materials and in the manner prescribed by section sixty-one of this act; *provided, further*, that windows required to open onto a street, yard, or an outer court, except windows from kitchens, may open through porches, provided that said porches do not exceed seven feet in depth measured at right angles to the windows and that at least seventy-five per cent of the entire side of the porch, bounded by the street, yard, or outer court, is left open except that the open space may be enclosed with mosquito screens.

(dd) *Window Areas*.—Sec. 31. In every tenement house hereafter erected the total window area in each



room except in a water-closet compartment, bath, toilet, slop-sink room or shower room shall be at least one-eighth of the superficial floor area of the room.

The aggregate window area in each room shall be not less than twelve square feet, and no single window shall be less than six square feet in area.

All measurements for window area shall be taken to outside of sash.

Sec. 32. In every tenement house hereafter erected each window in a water-closet compartment or bath, toilet or slop-sink room, or shower room, shall be not less than three square feet in area. The aggregate area of windows for each such compartment or room shall be not less than six square feet. In each such compartment or room containing more than one water-closet, bath, urinal or slop-sink, the aggregate window area shall be equivalent to three square feet for each water-closet, bath, urinal or slop-sink therein, except that at no time need the aggregate window area exceed one-fourth of the superficial floor area of such compartment or room.

Sec. 33. In every tenement house hereafter erected, the total window area in each room used for the purpose of amusement, entertainment or as a reception room, or any room used for similar purposes, which room has a superficial floor area not exceeding one hundred eighty square feet, shall be at least one-eighth of the superficial floor area of such room.

Every such room which has a superficial floor area exceeding one hundred eighty square feet shall have an aggregate window area not less than that required for a room of one hundred eighty square feet of superficial floor area.

Amusement, entertainment or reception rooms and rooms used for similar purposes, in lieu of being provided with windows, as in this section prescribed, may be provided with a fan exhaust system of ventilation. Such fan exhaust system of ventilation shall consist of inde-

pendent inlet ducts, extending from the outer air to each such room and exhaust ducts extending from each such room to the outer air above the highest roof of the building.

All of the inlet ducts and exhaust ducts shall be constructed of galvanized iron or other smooth-surfaced, nonabsorbent material and so arranged that they may be readily cleaned out.

The exhaust ducts shall always be connected to an exhaust fan mechanically operated, so designed and operated as to provide a complete change of air in not to exceed fifteen minutes for each such room.

Any person in charge of a building in which a system of fan exhaust ventilation, as in this section is required, who fails, neglects or refuses to operate and maintain the said system of ventilation in good order and repair so that the ventilation (complete change of air) herein specified is provided in each such room at all times, shall be deemed guilty of a misdemeanor and subject to all of the penalties fixed by this act.

Every amusement, entertainment or reception room, or any room used for similar purposes, shall have a minimum height between the finished floor and the finished ceiling of not less than nine feet. No such room or part thereof shall be used for living or sleeping apartments, except that said room or part thereof complies with all of the other provisions of this act, for living and sleeping apartments.

(ee) *Windows in Public Hallway.*—Sec. 34. In every tenement house hereafter erected, every public hallway on any floor where there are more than three apartments shall have at least one window opening directly upon a street, or upon a yard or a court of the dimensions specified in this act and located on the same lot; such windows shall be at the end of the public hallway and placed so as to secure the maximum light into the hallway; *provided, however*, that in tenement houses not ex-

ceeding two stories in height, the public hallway may, in lieu of such windows, be lighted and ventilated by one or more skylights constructed in accordance with the provisions of this act.

Every window required by this act in a public hallway shall be not less than twenty-nine inches in clear width, nor less than fifty-eight inches in height, and the finished sill of same shall not be more than thirty inches above the adjoining finished floor. Every such window shall be made so as to open and so arranged that at least one-half of the window may be opened unobstructed.

Every skylight provided for in this section shall have an effective horizontal area of glass of not less than fifteen square feet, and shall have ridge ventilators or fixed or movable louvres so as to provide a ventilating area of not less than five hundred square inches. Such skylights shall be so located that no portion of the hallway be distant more than twenty feet (measured from a vertical line) from a skylight opening.

Any part of a public hallway which is offset, recessed, or cut off from any other part of a hallway where such offset or recess is more in length than one and one-half times the width of the public hallway from which it offsets or recesses, shall be deemed a separate public hallway within the meaning of this section.

French windows or doors, if arranged to open and glazed to give the areas of opening and glass required by this act for windows in public hallways, may be used in lieu of windows therein.

(ff) *Ventilating Skylight*.—Sec. 35. In every tenement house two or more stories in height hereafter erected, where there are more than three apartments on any one floor, there shall be provided at the roof over each stairway a ventilating skylight, placed directly as practicable over same, having a minimum effective horizontal area of glass at least twenty square feet in area for buildings two stories in height, and the area of glass in such

skylight shall be increased at a ratio of six square feet for each additional story in height. In every such skylight the ventilating area shall be not less than five hundred square inches.

Every such skylight and the ventilating openings and the shutters and the closing and opening devices for the ventilating openings shall be made of approved incombustible materials, and so arranged that the entire ventilating area may be readily opened from at least the top-most and first story levels, except that in tenement houses not exceeding four stories in height the ventilators may be arranged so as to open from at least the first story, or the ventilators may be fixed permanently in an open position.

Skylights as in this section prescribed may be omitted in case that windows are provided of the size fixed by section thirty-four hereof and located adjoining the stairways, and that each window adjoining the stairway be provided with an open louvre or ventilator providing a ventilating area of not less than one hundred square inches or such louvre or ventilator may be placed in the roof over the stairway, in which event the ventilating area shall be not less than five hundred square inches.

Whenever a skylight is required as in this section provided there shall be constructed a stair well, the clear open area of which shall be at each floor equal to one-third of the area of glass in the skylight.

(gg) *Water-closets*.—Sec. 36. In every tenement house hereafter erected, every apartment shall be so arranged that access may be had to every living room, and to at least one water-closet compartment, without passing through a bedroom; *provided, however*, that nothing in this section shall be so construed as to prohibit passing through a bedroom in going from a kitchen to a bathroom or water-closet compartment.

(hh) *Water-closet for Each Compartment*.—Sec. 37. In every tenement house hereafter erected there shall be



installed one water-closet within each apartment located in a separate compartment or located in a compartment with a bathtub, shower or lavatory, used exclusively by the occupants of the apartment.

No door or other opening to a water-closet compartment shall open from or into any room in which food is prepared or stored. The walls enclosing a water-closet compartment shall be well plastered or constructed of some nonabsorbent material, except that the ordinary wood trim of openings may be used in such compartment. Every such compartment shall be provided and equipped with a full door, properly hung, and provided with a lock or bolt to lock same.

The floor of every such water-closet compartment shall be made waterproof with asphalt, tile, marble, terrazzo, cement, or some other similar nonabsorbent material, and such waterproofing shall extend not less than six inches on the vertical walls of the room. No water-closet fixture shall be enclosed with woodwork.

Sec. 38. In every tenement house erected prior to the passage of this act there shall be provided at least one water-closet in a separate compartment, located on the public hallway of the same floor, for every three apartments or fractional part thereof on such floor which are not provided with private water-closets. Where two or more water-closets are required by the provisions of this section to be located on a public hallway, one of such water-closets shall be distinctly marked "for men" and one of the water-closets distinctly marked "for women"; *provided, however*, that the housing department charged with the enforcement of this act may exempt any tenement house existing at the time of the passage of this act from fully complying with the provisions of this paragraph when, in its discretion, such deviation will not be detrimental to the health of the occupants thereof or to the sanitation of the said tenement house or premises.

Nothing in this section shall be construed as permitting such exemptions to apply to any addition or extension to any tenement house.

Every water-closet hereafter placed in a tenement house erected prior to the passage of this act shall comply with every provision of this act relative to water-closets installed in tenement houses hereafter erected, except that if a water-closet is installed in the top story of any such building, the compartment in which it is installed may be ventilated by a skylight with fixed louvres in lieu of a window; *provided, however*, that a new water-closet may be installed to replace a defective or antiquated fixture in the same location.

Every tenement house erected prior to the passage of this act, or hereafter erected, where a connection with the sewer is possible, shall discontinue the use of any school sink, privy vault or any similar receptacle used to receive fecal matter, urine or sewage, and every such receptacle shall be completely removed and the place where it was located be properly disinfected. All such receptacles shall be replaced by individual water-closets of durable nonabsorbent material, properly connected, trapped, vented and provided with flush tanks, the same as is required, by the provisions of this act, in tenement houses hereafter erected.

(ii) *Bathtub or Shower*.—Sec. 39. In every tenement house hereafter erected there shall be a bathtub or shower within each apartment, and such bathtub or shower shall be located in a separate compartment, or there may be provided one such bathtub or shower in a separate compartment for every three such apartments which are not provided with private baths or showers; *provided*, that said bathtub or shower is on the same floor and is accessible from each apartment through the public hallway.

In every tenement house hereafter erected there shall be at least one kitchen sink within each apartment.

The walls, floors and openings to every bath, shower or slop-sink room hereafter constructed shall conform to all of the provisions of this act relative to the water-proofing of the walls and floors, and of the construction of the doors of water-closet compartments in tenement houses hereafter erected.

Sec. 40. In every tenement house erected prior to the passage of this act there shall be provided at least one bathtub or shower in a separate compartment, located on the same floor, for every five apartments, or fractional part thereof, which are not provided with private baths or showers, on each such floor, and there shall be provided at least one kitchen sink in each apartment; *provided, however*, that the department charged with the enforcement of this act may exempt any tenement house existing at the time of the passage of this act from fully complying with the provisions of this section when, in its discretion, such deviation will not be detrimental to the health of the occupants thereof or to the sanitation of the said tenement house or premises; *provided, further*, that no such exemption shall apply to any addition or extension to a tenement house.

(jj) *Running Water*.—Sec. 41. In every tenement house hereafter erected every plumbing fixture shall be provided with running water, and there shall be provided faucets, with running water, sufficient in number so that all of the yards, courts and passageways may be washed. Faucets shall be of the hose bibb type, not less than three-quarter inch size.

Every plumbing fixture affecting the sanitary drainage system in tenement houses hereafter erected, shall be properly connected with the street sewer, if a street sewer exists in the street abutting the lot on which the building is located and is ready to receive connections. When it is impracticable to connect such plumbing fixtures with a street sewer, then the plumbing fixtures shall be connected and drained into a cesspool constructed satisfactorily to the department charged with the enforce-

ment of this act; or some other means of sewage disposal satisfactory to the department charged with the enforcement of this act may be made until such time as it may become practicable and possible to connect with the street sewer.

Sec. 42. In every tenement house erected prior to the passage of this act, every plumbing fixture shall be provided with running water, and there shall be provided faucets, with running water, sufficient in number so that all of the yards, courts and passageways may be washed. Faucets shall be of the hose bibb type, not less than three-quarter inch size.

Sec. 43. Water-closets, baths, showers, sinks, slop-sinks, faucets and other plumbing fixtures required by this act need not be installed in the event that the tenement house hereafter erected or an existing tenement house, as the case may be, is situated where there is no running water and where there is no practical means of sewage disposal, until such time as it becomes practicable and possible to obtain running water and means of sewage disposal; *provided*, in every such case the department charged with the enforcement of this act shall decide whether or not it is practicable and possible to provide running water and proper means of sewage disposal. A special permit in writing shall be obtained in every such case from the department charged with the enforcement of this act, which permit shall be made in duplicate, and a copy thereof shall remain on file in the department issuing it; *provided, further*, that proper, separate toilet facilities for each sex shall be provided for the use of the occupants of such building. Such facilities shall be made sanitary. A privy, or toilet other than a water-closet, erected under the authority of this section shall consist of a pit at least three feet deep, with suitable shelter over the same to afford privacy, and protection from the elements. The openings of the shelter and pit shall be enclosed by mosquito screening, and the door to the shelter shall be made to close automatically by means of a spring



or other device. No privy pit shall be allowed to become filled with excreta to nearer than one foot from the surface of the ground, and the excreta in the pit shall be covered with earth, ashes, lime or similar substances at regular intervals. All drainage water shall be conveyed from the premises by means of a covered drain to a covered cesspool.

(kk) *Plumbing Fixtures Made Sanitary*.—Sec. 44. In every tenement house hereafter erected all plumbing fixtures affecting the sanitary drainage system shall be properly trapped and vented and made sanitary in every particular. In any tenement house hereafter erected, and in any tenement house erected prior to the passage of this act no plumbing fixtures shall be enclosed with woodwork, but the space under and around same must be left entirely open. All woodwork enclosing a water-closet, sink, slop-sink, wash tray or lavatory shall be removed and the floor and wall surface beneath and around such water-closet, sink, slop-sink, wash tray or lavatory shall be maintained in good repair, and if of wood, well painted with a light colored paint of sufficient body to make it nonabsorbent. All wooden seats, attached to water-closet bowls, shall be varnished or enameled, or by some other method be made nonabsorbent.

In every tenement house hereafter erected water-closets shall have earthenware bowls and shall have earthenware seats integral with the bowls, or wooden seats varnished or enameled so as to be nonabsorbent, or seats made of some nonabsorbent material attached directly to the bowls. No wooden wash trays or wooden kitchen sinks shall be permitted in such buildings. All plumbing connections hereafter made in buildings shall be of standard lead, iron, steel or brass; and every gas and water service connection hereafter made shall be of steel or iron, and shall be equipped with cut-off valves placed outside of the building and such cut-off valves shall be readily accessible.

Whenever any plumbing fixture becomes insanitary the department charged with the enforcement of this act is hereby empowered to order the same removed and to order that it be replaced by a fixture conforming to the provisions of this act.

(11) *Two Means of Egress*.—Sec. 45. Every tenement house hereafter erected, three or more stories in height and in which there are three or more apartments on any one floor, shall be so designed and constructed that every apartment in such building shall have not less than two means of egress, either by stairways or fire escapes, constructed in accordance with the provisions of this act. Such means of egress shall be accessible from every apartment, either directly or through a public hallway, and so located that should one egress be or become blocked, the other egress shall be available.

(mm) *Stairways*.—Sec. 46. Every tenement house hereafter erected shall have not less than two stairways.

Every fireproof tenement house hereafter erected shall have not less than one stairway, not less than three feet six inches wide, for each six thousand square feet, or fractional part thereof, of floor area in any one floor above the first floor thereof.

Every semifireproof tenement house hereafter erected shall have not less than one stairway, not less than three feet six inches wide, for each four thousand square feet, or fractional part thereof, of floor area in any one floor above the first floor thereof.

Every wooden tenement house hereafter erected shall have not less than one stairway, not less than three feet six inches wide, for each three thousand square feet, or fractional part thereof, of floor area in any one floor above the first floor thereof.

Every tenement house hereafter erected shall have not less than one stairway leading from the outside to every basement or cellar thereof.

Sec. 47. The largest floor area above the ground floor shall be used as the basis for computing the number of stairways required in every tenement house hereafter erected; *provided*, that if all floors above the largest floor area of the building are diminished in area, the stairway or stairways from that portion of the building containing a smaller area may be computed on the basis of the largest floor area in that portion of the building.

Sec. 48. All stairways hereafter constructed shall be located so as to furnish the best means of egress from the building, and shall be as far removed from each other as practicable, and shall be as follows:

Access to stairway shall be provided at every floor by means of a public hallway, corridor, or passageway, and the public hallway, corridor, passageway and stairway from the ground exit level to the top story or roof shall be accessible at all times.

No stairway shall abut on more than one side of an elevator shaft, except on the lowest and topmost stories, provided that the stairway is so located that it can be approached from the street entrance without passing by or in front of the open side of the said elevator shaft.

No stairway shall be located over a steam boiler, gas meter or gas heater or furnace, unless such boiler, gas meter, gas heater, or furnace be located in a room, the walls and ceiling of which are constructed as required for a boiler room by section sixty-three of this act. No stairway leading from any other portion of the building shall terminate in or pass through a boiler room.

Sec. 49. Every stairway hereafter constructed shall be as follows: have a rise of not more than eight inches and a run of not less than nine inches, without change in the run or rise between floors; and shall be provided with head room of not less than six feet six inches measured from the nearest nosing of the stairway to the nearest soffit.

The depth of every landing in a stairway shall be not less than the width of the stairway, and all treads shall be of equal width for every run of stairs, and shall not vary in width in the width of the stairs.

Stairways required by this act shall be continuous from the ground floor to the top story, *i. e.*, the flights of such stairways shall be constructed one directly above the other, or shall be constructed so that each flight shall be in plain view of each succeeding flight; *provided, however*, that half of the stairways from the upper floors may terminate at the second floor, in the event that the stairways from the first to the second floor be increased in width not less than fifty per cent.

Every stairway shall have at least one handrail, and if the stairway be five feet or more in width, shall have a handrail on each side thereof.

The underside and soffits of wooden stairways and the outside stringers of open stairways except outside stairway, in semifireproof and wooden tenement houses shall be metal lathed and plastered not less than three-quarters inch thick including the lath, or lathed with an approved plaster board and plastered not less than three-quarters inch thick including the plaster board.

The width of stairways shall be measured in the clear of all projections except the baseboards, and except that handrails and newel posts may project not more than four inches.

Sec. 50. No closet of any kind shall be constructed in any tenement house under any wooden stairway, but such space shall be kept entirely open, and be kept clean and free from all encumbrances; or such space shall be effectually closed with walls of studs, lathed and plastered, with no door or opening of any kind therein; *provided, however*, that the provisions of this section as to a closet under a stairway shall not apply to any tenement house not more than two stories in height, in which not more than two families live above the first floor thereof.



Sec. 51. In every tenement house hereafter erected more than two stories in height, the stairway nearest to the main entrance of the building shall be carried to the roof level and shall give egress to the roof through a penthouse or roof structure.

In every such building not exceeding two stories in height there shall be constructed a scuttle in the public hallway near the stairway. Such scuttle shall be not less than two feet by three feet in area, and shall be cut through the ceiling and roof.

Penthouses over stairways shall be built either of fire-proof materials or of wood studs, lathed with metal lath or approved plaster board and plastered not less than three-quarters inch thick including the lath or plaster board on the inside and outside thereof; or such penthouses may be covered in the same manner and with the same kind of materials as required by this act for the doors from such penthouses.

The door to the roof from a penthouse or roof structure shall be self-closing and shall open outward to the roof, and shall be covered on both sides and edges with tin or other metal.

The frames and trim of such door opening shall be similarly constructed and all glass in such door shall be wired glass not less than one-fourth inch thick.

Every tenement house of more than two stories in height, erected prior to the passage of this act, shall have in the roof a penthouse or a scuttle, which scuttle shall be not less than two feet by three feet in area, located in the ceiling of a public hallway. There shall be provided a stairway or a stationary ladder, leading from the top floor of such tenement house to the roof thereof. Such stairway or stationary ladder shall be made readily accessible to all the tenants of the building. No scuttle or penthouse door shall at any time be locked with a key, but may be fastened on the inside by a movable bolt or lock.

(nn) *Hallways, Etc., From Stairways*.—Sec. 52. Public hallways, landings and corridors from stairways shall be of the same width and measured in the same manner as the stairways, as provided in section fifty hereof.

(oo) *Fire Escapes*.—Sec. 53. On every tenement house hereafter erected more than two stories in height, which contains more than three apartments, there shall be provided at least one fire escape. If such tenement house exceeds three thousand square feet of floor area on any one floor above the second floor thereof, such building shall be provided with one additional fire escape for each four thousand square feet of floor area or fractional part thereof.

Fire escapes required by this act shall be of one of the following types:

Type 1. Metallic throughout and fastened securely to the exterior walls of the building, with a balcony at each story above the first story thereof, with inclined stairways connecting all balconies and a goose-neck ladder connecting the topmost balcony to the roof. The lowest balcony of such fire escape to be not more than fourteen feet above the street or ground level directly under same.

All metallic balconies shall be not less than forty-four inches in width nor less than thirty-three square feet in area. The stairway openings therein shall be not less than twenty-one inches wide and forty inches in length. The balcony balustrade shall be not less than thirty-four inches high, with no opening in such balustrade greater than eight inches in horizontal dimension.

There shall be no opening greater than one inch in width in a fire escape balcony platform, except the stair well opening.

There shall be no opening greater than one inch in width in the lowest fire escape balcony platform, except that there be attached a counterbalanced or permanent ladder reaching to the street or ground below.

Every balcony platform shall be fastened to the outside walls of the building by building in and anchoring to such walls the balcony platform and the balustrade framing, or by securely bolting same thereto. Every balcony shall be supported by brackets, braces, or struts fastened to or built in and anchored to the walls.

The inclined stairways shall be not less than eighteen inches in width and placed in no part nearer than twenty-one inches from the face of the wall. Such inclined stairways shall have an inclination of not less than four inches and not more than six inches horizontally to each twelve inches of vertical height. The treads shall be not less than four inches wide, placed not more than twelve inches apart. Each side of such stairways shall be provided with a handrail not less than one inch in diameter fastened to the stair stringers and continued around the well hole openings of balcony platform.

The goose-neck ladder shall be not less than fifteen inches wide and extend vertically from the topmost balcony to three feet above the fire wall or roof above, and then be brought down and fastened to the inside face of the fire wall or to the roof. The rungs of the goose-neck ladder shall be not less than five-eighths inch round iron or steel, placed not more than fourteen inches apart. The goose-neck ladder shall be securely braced and fastened to the outside wall, and in no case shall such ladder pass in front of any opening in the wall to the interior of the building. The cornice opening for the passage of such ladder shall be not less than twenty-four inches in width and twenty-four inches in the clear outside of the ladder.

Such fire escape shall be framed and riveted or bolted together in a solid, substantial manner and properly supported, braced and fastened to the outside walls so as to be rigid, durable and secure and carry the loads imposed.

All metallic fire escapes shall be painted with not less than two coats of good, durable paint; or such fire escapes may be galvanized.

Type 2. Metallic ladders and stairways conforming to the provisions set forth for type one and with reinforced concrete or iron or steel fireproofed balconies, with fastenings of similar materials. Such balconies to measure the full size inside of balustrades. Floor openings and well holes provided and protected similarly to the requirements for metallic balconies.

Type 3. Any type of an enclosed approved metallic spiral fire escape which consists of a rigid form of an inclined chute or chutes constructed entirely of incombustible material; securely attached to the outside walls of building; provided with proper means of ingress thereto from the building and egress therefrom at the bottom; having means enabling firemen to reach the roof thereby from the ground; equipped with standpipes; painted the same as provided for metallic fire escapes; and satisfactory to the department charged with the enforcement of this act as being as solid, substantial and durable and as fireproof in construction, and providing at least as safe and efficient means of escape from the building for the occupants thereof, and furnishing all the protection and utility of the metallic fire escapes described as "type one" in this act.

Type 4. Fire and smoke towers, consisting of a fire escape stairway not less than twenty inches in width, constructed of reinforced concrete, iron or steel, or a combination of these materials; and in all other details as required in this act for metallic fire escape stairways; said stairways being continuous the full height of the building from the first floor exit level to the roof, and with handrails on each side thereof the full length of same. Such stairways to be constructed at a point adjoining the exterior walls of the building and be entirely enclosed with walls of brick, terra cotta tile, concrete or reinforced concrete not less than twelve inches thick; such walls to be continuous from the basement up to and extending three feet above the roof of the building, with



no covering of any kind over same, and with no openings in the walls of such tower into the building. The enclosing walls of such tower not to be used to carry or support any floor joist, beam, girder or other structural feature of the building, nor to be chased for any pipe, conduit or other purpose; to have an exit from the enclosure at the first floor line opening directly to a street or yard, and having an entrance by means of an outside balcony at each floor, such balconies to have a solid floor and in all other details and kind of materials to be as in this act required for metallic fire escape balconies. The balconies to be located and arranged to connect with a door opening from a public hallway in the interior of the building and with a door opening leading from the balcony to the tower, such door opening from the building to the balcony and from the balcony to the tower to be not less than thirty inches wide by seventy-two inches high and be equipped with metal-lined doors and with a frame and threshold of such door openings constructed of fireproof materials.

Type 5. A fire and smoke tower in every way similar to "type four" of this section, except that instead of the outside balcony there be built a vestibule with enclosing walls continuous with and of the same kind of materials and of the same thickness as the enclosing walls of the fire tower; that the vestibule opening be direct from a public hallway and be equipped with metal-lined doors. The vestibule floor to be of masonry construction. The enclosure to have an opening at each floor through the exterior wall of the building, such opening to extend from the floor to the ceiling and be not less in width than three-fourths of the width of the tower, said opening to be protected with an open metallic balustrade similar to that specified for metallic fire escape balconies.

Sec. 54. In any tenement house hereafter erected in which there is constructed a fire escape of "type four" or "type five," as prescribed in this act, such fire escape

may be used and constructed as a stairway and a fire escape combined; provided, that there is at least one other stairway or one other fire escape constructed in accordance with the provisions of this act, in the said building.

Sec. 55. Every fire escape required by this act shall be located on the building so as to furnish the best means of escape therefrom for the occupants, and at least one such fire escape shall be located on a street front. Every fire escape shall have egress thereto from a public hallway or passageway not less than three feet wide, or such fire escapes in lieu of being located on a public hallway, shall be so located that each apartment has direct egress thereto without passing through another apartment, or if a public parlor, public lobby or similar room is connected directly with the public hall, corridor or passageway through a clear and unobstructed opening, without doors, then egress may be had thereby to a fire escape. Signs both pointing towards and marking the locations of fire escapes shall be placed on each floor.

Sec. 56. The largest floor area above the second floor shall be used as a basis for computing the number of fire escapes required by this act; *provided*, that if all floors above the largest floor area are diminished in size, the number of fire escapes from that portion of the building containing the smaller area may be computed on the basis of the largest floor area in that portion of the building.

Sec. 57. All parts of each balcony platform of a fire escape shall be designed to carry, in addition to the dead load thereof, a live load of one hundred pounds per square foot over the entire area thereof (using outside dimensions) and the live and dead loads from the ladders or stairs supported thereon.

Each ladder shall be designed to withstand a horizontal pressure of one hundred pounds per square foot.

Each stairway shall be designed to carry, in addition to the dead load thereof, a live load of one hundred fifty pounds per square foot of horizontal projection.

Top rails of balcony balustrades shall be designed to withstand a horizontal pressure of one hundred pounds per lineal foot of railing.

Each balcony shall be independently supported.

All fastenings of fire escape balconies to the building shall be designed to carry twenty-five per cent greater load than the total dead and live loads carried by the balconies. The balcony anchorage shall be direct to the structural steel or iron members of the balustrades and platforms extended into the walls and anchored into the structural work of the building.

The level of the inside sill of the door or window giving access to a fire escape balcony or the balcony floor shall be not more than thirty inches above the adjoining floor in the building. Every such door or window opening shall be not less than twenty-nine inches in clear width, nor less than fifty-eight inches in height.

Where double-hung windows are used in such openings, the lower sash shall be at least the size of the upper sash and shall slide to the top of such opening. Any lock used on any such window shall be of a type which can be readily opened from the interior of the building without the use of a key or other tool.

Sec. 58. Every fire escape in or on tenement houses hereafter erected, or in or on tenement houses erected prior to the passage of this act, shall at all times be maintained in good order and repair, well painted and clear and unobstructed at all times, and be readily accessible.

(pp) *Standpipes*.—Sec. 59. On every tenement house hereafter erected four or more stories in height, there shall be provided one or more metallic standpipes. Each such standpipe shall be not less than four inches in internal diameter, and shall have a Siamese inlet valve near the sidewalk or the ground directly under same, and an outlet valve at each story above the first story and on the roof.

One such standpipe shall be placed on or in the exterior walls of the building at one fire escape on each street frontage, and the outlet valves shall be readily accessible from the balconies of the fire escape.

The inlet and outlet valves on every standpipe shall be threaded and brought to a size which will meet the standard connections of the local fire department of the municipality in which such tenement house is being erected.

The standpipes required by this section need not be installed in any tenement house which is situated where there is no running water and where it is not practicable or possible to obtain water for efficient use of such standpipes in case of fire, until such time as it is practicable and possible to obtain running water; and the department charged with the enforcement of this act shall decide whether or not it is possible or practicable to obtain running water.

(qq) *Elevator Shafts.*—Sec. 60. In every fireproof tenement house hereafter erected, every elevator shaft, dumb-waiter shaft or other interior shaft shall be enclosed in walls constructed of concrete, reinforced concrete, brick, terra cotta tile or other similar hard incombustible materials, or shall be constructed of metal studs lathed either with metal lath or an approved plaster board and plastered on both sides so as to make a solid partition not less than two inches thick.

In every semifireproof or wooden tenement house hereafter erected, every such shaft shall be enclosed by walls constructed as provided by this act for fireproof tenement houses, or such walls may be constructed with wood studs, with wood firestops the same size as the studs, cut in between the studs at each floor and half way between each floor, lathed on both sides with metal lath or an approved plaster board and be plastered not less than three-quarters inch thick including the lath or the plaster board.



Every opening from any shaft into the building shall be equipped with a metal door and with door frame and trim entirely of metal; or such door and door frame shall be constructed of wood covered with metal on the shaft side thereof and if there is any glass therein, such glass shall be wired glass not less than one-fourth ( $\frac{1}{4}$ ) inch thick. Every door or window therein shall be made to close tight, and every door except elevator doors therein shall be self-closing.

Every window in such shaft shall be of wired glass, not less than one-fourth ( $\frac{1}{4}$ ) inch thick, set in a metal sash or a sash metal covered on the shaft side thereof. At the roof over every elevator shaft there shall be constructed a ventilating skylight or a ventilator with open louvres.

(rr) *Vent Shafts*.—Sec. 61. In every tenement house hereafter erected every vent shaft shall be enclosed with walls constructed the same as required by this act for elevator shaft in the same class of building. Such vent shafts may, in a semifireproof or wooden tenement house, be lined on the outside thereof (weather side) with metal in lieu of metal lath and plaster; also, that portion of such shaft extending from the ceiling joists to the top thereof may be lined with metal in the same manner as is required for the weather side of such vent shaft.

Every opening from any vent shaft into the building or any window therein, shall be equipped in the same manner as required by this act for elevator shafts in the same class of building.

Plaster on the weather side of any such shaft shall be cement plaster.

Every vent shaft required by this act shall be not less than four feet in any direction and be at least sixteen square feet in area. If such vent shaft exceeds fifty feet in height, measured from the bottom to the top of the walls of such shaft, then such vent shaft shall throughout its entire height be increased in area three square feet for

each additional ten feet or fractional part thereof above fifty feet.

Every such vent shaft shall be provided with an air intake or duct at or near the bottom thereof, communicating with the street or yard or a court. Such intake shall be not less than three square feet in total area, and may be divided into not more than three separate ducts running between the joists or otherwise, and shall in all cases be placed as nearly horizontal as possible. Every such intake or duct shall be constructed of approved fireproof material or shall be of metal or metal lined, and be provided with a wire screen of not less than one inch mesh at each end. Plumbing, gas, steam, or other similar pipes may be placed in such vent shaft.

Every such vent shaft shall have a door or a window at or near the bottom of the shaft, so arranged as to permit of its being readily cleaned out.

(ss) *Walls of Inner Court.*—Sec. 62. The walls of every inner court in a fireproof tenement house hereafter erected shall be constructed of concrete, reinforced concrete, brick, terra cotta tile or other similar hard incombustible material. In a semifireproof or in a wooden tenement house such inner court walls, if surrounded on four sides by the walls of the same building, shall be constructed as provided for fireproof tenement houses, or may be of wood studs, with wood firestops the same sizes as the studs, cut in between the studs at each floor and half way between each floor, lathed on both sides with metal lath, or an approved plaster board, and be plastered not less than three-quarters inch thick including the lath or the plaster board. Plaster on the weather side of such inner court walls shall be cement plaster, or such inner court walls may be lined on the weather side with not less than the number twenty-six (gauge) metal, in lieu of metal lath and plaster.

(tt) *Boiler Room.*—Sec. 63. In every tenement house hereafter erected, every boiler used for purposes of heat-

ing the building, using fuel other than gas, and every heating furnace or water-heating apparatus, using oil for fuel, shall be installed in a room, the walls of which room shall be built of concrete, reinforced concrete, brick, stone or terra cotta tile, not less than six (6) inches thick, and such walls shall extend from the floor of the boiler room to the ceiling over same. The entire ceiling of such room shall be built of similar materials as the walls, or shall be built with a double ceiling, with a space of not less than seven-eighths inch between the two ceilings; each ceiling shall be metal lathed or lathed with an approved plaster board and be plastered not less than three-quarters inch thick, including the lath or plaster board. The floor of a boiler room shall be of concrete not less than two (2) inches thick.

Any door in the wall of such room shall be a fire-resisting door, constructed of three (3) thicknesses of seven-eighths ( $\frac{7}{8}$ ) inch by not more than six (6) inches, tongued and grooved, matched redwood boards entirely covered on the sides and edges with lock-jointed tin; every such door shall be self-closing, so hung as to overlap the walls of the room at least three (3) inches, and any glass in any such door or any glass in any window or opening in the walls of a boiler room shall be wired glass, not less than one-fourth ( $\frac{1}{4}$ ) inch thick, set in a metal or metal covered sash.

All such doors shall have hinges, hangers, latches and other hardware of wrought iron, bolted to the doors, and shall have steel tracks, when sliding doors are used, with wrought-iron stops and binders bolted through the wall. Swinging doors shall have wall eyes of wrought iron, built into or bolted through the wall.

Every such boiler room shall have a sill across each door not less than four (4) inches high. Such sill shall be of masonry, and the doors shall overlap same at least three (3) inches, or in lieu of a masonry sill a steel or iron sill may be used, in which case the bottom of the

door shall close tight on top of same. Every swinging door in a boiler room shall open outward from the boiler room.

Where oil or other fluid fuel is burned, the oil or other fluid fuel shall not be fed by a gravity flow.

(uu) *Garages*.—Sec. 64. In every tenement house hereafter erected any portion of such building, in which there is kept or stored any automobile or automobiles, shall be a room, the enclosing partitions of which shall be built of concrete, reinforced concrete, brick, stone or terra cotta tile, not less than six (6) inches thick, or may be of wood studs lined on the automobile storage room side with redwood boards not less than seven-eighths ( $\frac{7}{8}$ ) of an inch thick covered with asbestos paper one-eighth ( $\frac{1}{8}$ ) of an inch thick, and then covered with No. 26 (gauge) galvanized iron, and such enclosing partitions shall extend from the floor of the room to the ceiling of the same. The entire ceiling of such room shall be built of material similar to that used in the construction of its walls, or shall be either metal lathed and be well plastered or be lathed with an approved plaster board and be well plastered. The floor of every such room shall be of concrete not less than two (2) inches thick.

Every door, window or other opening in the walls of such room, opening to the interior of the building, shall be protected in the same manner as required by section sixty-three hereof for doors, windows and other openings in a boiler room.

Sec. 65. In any tenement house erected prior to the passage of this act, every additional room or hallway that is hereafter constructed or created, may be of the same height as the other rooms or hallways on the same story of such tenement house.

(vv) *Windows in Tenement Already Erected*.—Sec. 66. Every room in a tenement house erected prior to the passage of this act shall, if the said room be hereafter occupied for living or sleeping purposes, have a



window of an area not less than eight square feet, opening directly upon a street, a yard, a court or upon a vent shaft not less than twenty-five square feet in area, which vent shaft shall in no part be less than four feet wide and open and unobstructed, without roof or skylight over same; except that if such room be located on the top floor of the building, such room may be ventilated by a skylight with fixed louvres directly to the outer air, or may have a window opening upon a vent shaft not less than ten square feet in area, if such window from the room be not more than three feet below the top of the wall of such vent shaft.

Every public hallway in every tenement house erected prior to the passage of this act, which does not conform to the provisions for public hallways in buildings hereafter erected, shall be provided with light and ventilation to the outer air. Such light and ventilation shall be provided by the placing of windows or skylights, or by making such alterations as in the judgment of the housing department may be deemed necessary to accomplish the result.

(ww) *Cooking in Bath Unlawful.*—Sec. 67. It shall be unlawful for any person to cook or to prepare food, or to permit or suffer any person to cook or to prepare food in any bath, shower, slop-sink or toilet room, water-closet compartment; or in any closet, or recess from a room, or dressing room, which does not conform to all the provisions of this act as to size of kitchens and windows opening to a street, yard or court, or in any other place in such building which, in the judgment of the department charged with the enforcement of this act, is detrimental to the proper sanitation of such building.

It shall be unlawful for any person to live or sleep, or permit or suffer any person to live or sleep, in any cellar, bath or shower compartment or slop-sink room, water-closet compartment, hallway, closet, kitchen, recess from a room or dressing room, except when such re-

cess from a room or dressing room has not less than ninety square feet of superficial floor area and complies with every other requirement of this act for rooms, or in any other place which, in the judgment of the department charged with the enforcement of this act, would be dangerous or prejudicial to life or health by reason of want of light, windows, ventilation, drainage, or on account of dampness or offensive, obnoxious or poisonous odors, or in any room that shall be so overcrowded as to afford less than the following floor space for each occupant, in accordance with the age of the said occupant:

Number of persons over 12 years of age	Number of persons under 12 years of age	Superficial floor area required
1 or .....	2 .....	60 square feet
2 or .....	4 .....	120 square feet
3 or .....	6 .....	180 square feet
4 or .....	8 .....	240 square feet
5 or .....	10 .....	300 square feet
6 or .....	12 .....	360 square feet

Additional floor area in the same ratio shall be provided for additional persons.

(xx) *Lighting of Hallways*.—Sec. 68. In every tenement house there shall be installed and kept burning from sunrise to sunset throughout the year artificial light sufficient in volume to properly illuminate every public hallway, stairway, fire escape egress, elevator, passageway, public water-closet compartment, or toilet room, whenever there is insufficient natural light to permit a person to read in any part thereof.

In every tenement house there shall be installed and kept burning from sunset to sunrise throughout the year artificial light sufficient in volume to properly illuminate every public hallway, stairway, fire escape egress, elevator, public water-closet compartment, or toilet room and exterior passageway on the lot.

(yy) *Light Colored Material on Walls*.—Sec. 69. The walls and ceilings of every sleeping room in every tenement house shall (except when there is sufficient natural light to permit a person to read in any part thereof dur-

ing daytime) be calcimined or painted or papered with a light-colored material, and such calcimine, paint or paper, as the case may be, shall be renewed as often as necessary to maintain the same of a light color and clean and free from vermin.

The walls of courts and shafts, unless built of light-colored materials, shall be painted of a light color or whitewashed, and such painting or whitewashing shall be renewed as often as is necessary to maintain the same of a light color.

(zz) *Repapering*.—Sec. 70. No wall, partition or ceiling of any room in any tenement house shall be repapered, calcimined, or have any other covering placed thereupon unless the old wall paper or other covering shall have first been removed therefrom, and the said wall, partition or ceiling cleaned, disinfected and freed from bugs, insects or vermin.

(aaa) *Repairs*.—Sec. 71. Every tenement house shall be maintained in good repair. The roofs shall be kept waterproof and all storm or casual water properly drained and conveyed therefrom to the street sewer, storm drain or street gutter.

All portions of the lot about a tenement house, including the yards, areaways, vent shafts, courts and passageways, shall be properly graded and drained; and whenever the department charged with the enforcement of this act deems it necessary for the protection of the health of the occupants of such building, or for the proper sanitation of the premises, it may require that the said lot, yards, areaways, vent shafts, courts and passageways be graveled or properly paved and surfaced with concrete, asphalt or similar materials.

(bbb) *Metal Mosquito Screening*.—Sec. 72. There shall be provided, whenever it is deemed necessary for the health of the occupants of any tenement house or for the proper sanitation or cleanliness of any such building, metal mosquito screening of at least sixteen mesh, set in

tight-fitting removable sash, for each exterior door, window or other opening in the exterior walls of the building.

(ccc) *Garbage Cans.*—Sec. 73. In every tenement house there shall be provided by the occupants, or tenants, such number of tight metal receptacles with close-fitting metal covers for garbage, refuse, ashes and rubbish as may be deemed necessary by the department charged with the enforcement of this act, or in lieu of such metal receptacles there may be constructed a garbage chute or shaft approved by the housing department. Each of said receptacles shall be kept in a clean condition by the occupants, or tenants, and in the case of a chute or shaft by the person in charge or in control of the building.

(ddd) *Rooms, Etc., to Be Kept Clean.*—Sec. 74. Every room, hallway, passageway, stairway, wall, partition, ceiling, floor, skylight, glass window, door, carpet, rug, matting, window curtain, water-closet compartment or room, toilet room, bathroom, slop-sink, or wash-room, plumbing fixture, drain, roof, closet, cellar, or basement in any tenement house or on the lot, yard, court or any of the premises thereof, shall be kept in every part clean and sanitary, and free from all accumulation of debris, filth, rubbish, garbage or other offensive matter.

No person shall, or cause or permit any person to, deposit any swill, garbage, bottles, ashes, cans or other improper substances in any water-closet, sink, slop-hopper, bathtub, shower, catch-basin, or in any plumbing fixture connection or drain therefrom; or otherwise to obstruct the same; or to place or cause or permit to be placed any filth, urine or other foul matter in any place other than the place provided for same; or to keep or cause or permit to be kept any urine or filth or foul matter in any room or apartment in any tenement house, or in or about the said building or premises thereof, for such length of time as to create a nuisance.

Sec. 75. In every tenement house, every part of every bed, including the mattress, sheets, blankets and bedding,



shall be kept in a clean, dry, and sanitary condition, free from filth, urine or other foul matter, in or upon the the same; and free from the infection of lice, bedbugs or other insects.

(eee) *Dangerous Articles Not to Be Kept.*—Sec. 76. In no tenement house or any part thereof, or in the lot, yard, court or any portion thereof, shall there be kept, stored or handled any article dangerous or detrimental to life or to the health of the occupants thereof; nor shall there be stored, kept or handled any feed, hay, straw, excelsior, cotton, paper stock, rags or junk, except upon a written permit so to do, obtained from the fire commissioner or other department authorized to issue such permit. Every such permit shall be deemed to be a public record, made in duplicate, and a copy thereof shall remain on file in the office of the fire commissioner or department issuing same.

Sec. 77. No horse, cow, calf, swine, sheep, goat, rabbit, mule or other animal, chicken, pigeon, goose, duck or other poultry shall be kept in any tenement house or any part thereof; nor shall any such animal or poultry, nor shall any stable be kept or maintained on the same lot, yard, court or premises of a tenement house or within twenty feet of any window or door of such building, nor shall there be hereafter constructed, altered, converted or maintained in any tenement house any public automobile garage or machine shop, or automobile repair shop.

No bakery or place of business in which fat is boiled shall be constructed or maintained in any tenement house, unless such bakery or place of business in which fat is boiled is constructed of approved fireproof materials, with no openings connecting into the tenement house, and so separated and arranged as to prevent odors from entering such building.

No tenement house shall be constructed with or have any door, window or transom opening to any part of a building wherein spirituous liquors, drugs, paint or oil

are stored or kept for the purpose of sale or otherwise.

(fff) *Housekeeper in Charge*.—Sec. 78. In every tenement house in which eight (8) or more families reside, and in which the owner does not live, there shall be a janitor, housekeeper or other responsible person, who shall reside in such tenement house or on the same lot or premises thereof and have charge of same.

(ggg) *Fine a Lien*.—Every fine imposed by judgment under section six of this act upon a tenement house owner shall be a lien upon the house in relation to which the fine is imposed, from the time of the filing of a certified copy of said judgment in the office of the recorder of the county in which said tenement house is situated, subject only to taxes and assessments and water rates, and to such mortgage and mechanics' liens as may exist thereon prior to such filing; and it shall be the duty of the department charged with the enforcement of the provisions of this act, upon the entry of such judgment, to file forthwith the copy as aforesaid, and such copy upon filing shall be forthwith indexed by the recorder in the index of mechanics' liens.

(hhh) *Name of Owner to be Filed*.—Every owner of a tenement house and every lessee of the whole house, or other person having control of a tenement house, shall file in the housing department a notice, containing his name and address, and also a description of the property, by street and number and otherwise, as the case may be, in such manner as will enable the department charged with the enforcement of this act easily to find the same; and also the number of apartments in each house, the number of rooms in each apartment, and the number of families occupying the apartments. In case of a transfer of any tenement house, it shall be the duty of the grantee of said tenement house to file in the housing department a notice of such transfer, stating the name of the new owner, within thirty days after such transfer. In case of the devolution of the said property by will, it shall be

the duty of the executor and the devisee, if more than twenty-one years of age, and in the case of devolution of such property by inheritance without a will, it shall be the duty of the heirs, or in case all the heirs are under age, it shall be the duty of the administrator of the deceased owner of said property, to file in said department a notice, stating the death of said owner and the names of those who have succeeded to his interests, within thirty (30) days after the death of the decedent, in case he died intestate, and within thirty days after the probate of his will, if he died testate.

(iii) *Name of Agent Filed.*—Every owner, agent or lessee of a tenement house shall file in the housing department a notice containing the name and address of such agent of such house, for the purpose of receiving service of process, and also a description of the property, by street and number or otherwise, as the case may be, in such manner as will enable the department charged with the enforcement of this act easily to find the same. The name of the owner or lessee may be filed as agent for this purpose.

(jjj) *Notices.*—Every notice or order in relation to a tenement house shall be served five days before the time for doing the thing in relation to which it shall have been issued.

(kkk) *Minimum Requirements.*—Sec. 87. The provisions of this act shall be held to be the minimum requirements adopted for the protection, the health and the safety of the community, and for the protection, the health and the safety of the occupants of tenement houses. Nothing in this act contained shall be construed as prohibiting the local legislative body of any incorporated town, incorporated city, incorporated city and county, or county, from enacting, from time to time, supplementary ordinances or laws imposing further restrictions, or providing for fees to be charged for permits, certificates, or other papers required by this act; but no ordinance, law,

regulation or ruling of any municipal department, authority, officer or officers, shall repeal, amend, modify or dispense with any of the provisions of this act.

All statutes of the state and all ordinances of incorporated towns, incorporated cities, incorporated cities and counties, and counties, as far as inconsistent with the provisions of this act, are hereby repealed; *provided*, that nothing in this act contained shall be construed as repealing or abrogating any present law or ordinance of any incorporated town, incorporated city, incorporated city and county, or county in the state which further restricts the percentage of the lot to be covered by a tenement house, the number of stories or height of such tenement house or number of apartments therein, the occupation thereof, the materials to be used in its construction, or increasing the size of the yards or courts, the floor space to each person occupying a room, the requirements as to sanitation, ventilation, light and protection against fire.

Nothing in this act contained shall be construed as abrogating, diminishing, minimizing or denying the power of any incorporated town, incorporated city, incorporated city and county, or county, by ordinance or law, to further restrict the percentage of the lot to be covered by a tenement house within said municipality, the number of stories or height of such tenement house or number of apartments therein, the occupation thereof, the materials to be used in its construction, or increasing the size of the yards or courts, the floor space to each person occupying a room, the requirements as to sanitation, ventilation, light and protection against fire.

Act of the Legislature, approved May 31, 1917;  
in effect September 1, 1917.

Section 437.—DWELLING HOUSE ACT.—The Legislature of California in 1917 passed a law to regulate the construction, occupancy, and use of dwelling houses in



this State, providing as follows:

Section 1. This act shall be known as the "State Dwelling House Act," and its provisions shall apply to incorporated towns, incorporated cities, and incorporated cities and counties, of this State.

Section 2 of the act provides for its enforcement by the building departments of cities and towns.

(a) *Unlawful to Construct Dwelling Contrary to Act.*—Sec. 3. It shall be unlawful for any person, firm or corporation, whether as owner, agent, contractor, builder, architect, engineer, superintendent, foreman, plumber, tenant, lessee, lessor, occupant, or in any other capacity whatsoever to erect, construct, reconstruct, alter, build upon, move, convert, use, occupy or maintain, or to cause, permit or suffer to be erected, constructed, reconstructed, altered, built upon, moved, converted, used, occupied or maintained any dwelling or any portion thereof contrary to the provisions of this act, or to commit or maintain or cause or permit to be committed or maintained any nuisance in or upon any dwelling or any portion thereof, or any of the premises, which are a part thereof, or which are required by the provisions of this act; or to do or to cause to be done, or to use or cause to be used, any privy, sewer, cesspool, plumbing or house drainage affecting the sanitary condition of any dwelling or any portion thereof, or of the premises thereof, contrary to any of the provisions of this act.

(b) *Alterations.*—Sec. 4. It shall be unlawful for any person to make any alterations or changes of any kind whatsoever, to any dwelling erected prior to the passage of this act, or to any dwelling hereafter erected, in any manner which would be inconsistent with any of the provisions of this act, or in violation of the said provisions of this act; or in any manner to diminish the size of the windows, or to remove any window or windows from the rooms contrary to any of the provisions of this act.

(c) *Building Converted to Use as Dwelling.*—Sec. 5. A building not erected for, or which is not used as a dwelling at the time of the passage of this act, if hereafter converted to or altered for such use, shall thereupon become subject to all the provisions of this act affecting a dwelling hereafter erected.

A building used as a dwelling at the time of the passage of this act, if moved, shall be made to conform to all of the provisions of this act affecting dwellings hereafter erected, in so far as they pertain to unoccupied area.

(d) *Penalty for Violation.*—Sec. 6. Any person, firm or corporation violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in a county jail not exceeding six months, or by both such fine and imprisonment.

Section 7 gives city department officers and the owner authority to enter dwellings to secure compliance with the provisions of this Act.

(e) *Definitions.*—Sec. 8. For the purpose of this act, certain words and phrases are defined as follows, unless it shall be apparent from their context that they have a different meaning:

“Apartment” is a room or suite of rooms which is occupied, or is intended or designed to be occupied, by one family for living and sleeping purposes.

“Basement” is any story or portion thereof partly below the level of the curb or the actual adjoining ground level, the ceiling of which in no part is less than seven feet above the curb level or actual adjoining ground levels. If the adjoining ground is excavated to or below the curb level, such excavated space shall have not less than the minimum width and length required in this act for outer courts.

“Building” is a dwelling.

“Cellar” is any story or portion thereof, the ceiling of which is less than seven feet above the curb level and actual adjoining ground levels.

“Curb level” is the curb level opposite the center of the front of lot, and in the event that a curb has not been established shall be deemed to be the average ground level at the front of lot.

“Dwelling” is as follows:

(a) Any house or building, or any portion thereof, which contains not more than two apartments, or not more than five guest rooms, or,

(b) Any house or building or any portion thereof, not more than one story in height, which contains more than two apartments, or,

(c) Any house or building, or any portion thereof, of more than one story and not more than two stories in height, which is designed, built, rented, leased, let or hired out to be occupied, or is occupied, as the home or residence of not more than four families (four apartments), and which is so arranged that each of the said families live independently of each other, and which building is constructed and arranged so that a separate section is or may be kept as a home or a residence of a separate family. Each such section having an entirely independent and separate entrance, and if a stairway is required, one separate stairway leading to each section from the street or from an outside vestibule on the level of the first floor of said building, and with no room, hallway, bathroom, water-closet or kitchen used in common by two or more families occupying the said building.

“Family” is one person living alone or a group of two or more persons living together in an apartment, whether related to each other by birth or not.

“Guest” is any person hiring and occupying a room for sleeping purposes, and shall include both boarders and lodgers.

“Guest room” is a room which is occupied, or is intended, arranged or designed to be occupied, for sleeping purposes by one or more guests.

“Lot” is a parcel or area of land on which is situated a dwelling, together with the land, and unoccupied spaces for such a dwelling, as required by this act; all of which land shall be owned by or be under the absolute lawful control and in the lawful possession of the dwelling.

“Nuisance” embraces public nuisance as known at common law or in equity jurisprudence, and whatever is dangerous to human life or detrimental to health, and shall also embrace the overcrowding with occupants of any room, insufficient ventilation, or inadequate or insanitary sewerage or plumbing facilities, or uncleanness, and whatever renders air, food or drink unwholesome or detrimental to the health of human beings.

“Street” is any public street, alley, thoroughfare or park having a minimum width of sixteen feet, measured from the front of lot to the opposite front of lot, and shall have been dedicated or deeded to the public for public use.

Sec. 9. Every dwelling hereafter erected shall be constructed in a substantial manner; and the building shall be so constructed as to provide shelter to the occupants against the elements, and so as to exclude dampness in inclement weather.

Sec. 10. In no dwelling shall any room in the cellar be constructed, altered, converted or occupied for living or sleeping purposes.

(f) *Rooms in Basement*.—Sec. 11. In no dwelling shall any room in the basement be constructed, altered, converted or occupied for living purposes unless it conforms to all of the requirements of this act for rooms in other parts of the building, and that the ceiling of each such room be in all parts not less than seven feet above the adjoining ground levels.

All the walls below the ground level and the floors of such a basement shall be dampproofed and waterproofed.



Such dampproofing and waterproofing shall run through the walls and up as high as the ground level and continue throughout the floor.

Every basement in such buildings shall be illuminated and ventilated.

(g) *Ventilation Beneath Floor*.—Sec. 12. In every dwelling hereafter erected there shall be provided a clear air space under the lowest floor thereof of at least six inches, except where there is a ventilated basement or cellar underneath such floor, which clear air space shall be enclosed and provided with a sufficient number of openings with removable screens, or similar provisions, of a size to insure ample ventilation. The surface underneath the floor shall be kept dry, drained, clean and free from any accumulation of rubbish, debris or filth.

The provisions of this section shall not be deemed to apply to masonry floors laid directly on the soil, nor to any self-supporting masonry floor.

(h) *Width and Height*.—Sec. 13. In every dwelling hereafter erected, every room used for living or sleeping purposes shall contain at least ninety square feet of superficial floor area.

Every such room shall at every point be not less than seven feet in width, nor less than eight feet in height measured from the finished floor to the finished ceiling; except that attic rooms and rooms where sloping ceilings occur need be eight feet in height in but one-half the area of the room.

Every water-closet compartment shall be not less than thirty-six inches in width and every such compartment and bath or shower compartment shall have a height of not less than seven feet six inches measured from the finished floor to the finished ceiling.

(i) *Windows*.—Sec. 14. In every dwelling hereafter erected, every room used for living or sleeping purposes and every kitchen, water-closet compartment, shower or bathroom, shall have at least one window, of the area fixed

by this act, opening directly upon a street, or upon unoccupied area not less than four feet in its least dimension and containing an area of not less than thirty-six square feet, and located on the same lot.

A cornice may extend into the unoccupied area two inches for each one foot in width of such unoccupied area.

Windows herein required shall be located so as properly to light all portions of the room, and shall be made so as to open in all parts and so arranged that at least one-half of the window may be opened unobstructed; *provided, however*, that the windows required by this section in a water-closet compartment or bath or shower room may be opened directly into a vent shaft, such vent shaft to be in no dimension less than eighteen inches; *provided, further*, that windows required to open onto a street or onto unoccupied area may open through porches, provided that the said porches do not exceed seven feet in depth, measured at right angles to the windows and that at least seventy-five per cent of the entire side of the porch, bounded by the street or unoccupied area is left open, except that the open space may be enclosed with mosquito screens.

Sec. 15. In every dwelling hereafter erected the total window area in each room used for living or sleeping purposes shall be at least one-eighth of the superficial floor area of the room.

All measurements for window area shall be taken to outside of sash.

Sec. 16. In every dwelling hereafter erected, the window area in a water-closet compartment or bathroom shall be not less than three square feet.

(j) *Water Closets*.—Sec. 17. Every dwelling hereafter erected shall be provided with one water-closet for each family living therein.

(k) *Plumbing Fixtures*.—Sec. 18. In every dwelling hereafter erected every plumbing fixture shall be provided with running water.

Every plumbing fixture affecting the sanitary drainage system in dwellings hereafter erected shall be properly connected with the street sewer, if a street sewer exists in the street abutting the lot on which the building is located and is ready to receive connections. When it is impracticable to connect such plumbing fixtures with a street sewer, then the plumbing fixtures shall be connected and drained into a cesspool constructed satisfactorily to the department charged with the enforcement of this act; or some other means of sewage disposal satisfactory to the department charged with the enforcement of this act may be made until such time as it may become practicable and possible to connect with the street sewer.

Sec. 19. Water-closets, baths, showers, sinks, slop-sinks, faucets and other plumbing fixtures required by this act need not be installed in the event that the dwelling hereafter erected, or an existing dwelling, as the case may be, is situated where there is no running water and where there is no practical means of sewage disposal, until such time as it becomes practicable and possible to obtain running water and means of sewage disposal; *provided*, in every such case the department charged with the enforcement of this act shall decide whether or not it is practicable and possible to provide running water, or proper means of sewage disposal; *provided, further*, that proper toilet facilities shall be provided for the use of the occupants of such building. Such facilities shall be made sanitary. A privy, or toilet other than a water-closet, erected under the authority of this section shall consist of a pit at least three feet deep, with suitable shelter over the same to afford privacy and protection from the elements. The openings of the shelter and pit shall be enclosed by fly screening, and the door to the shelter shall be made to close automatically, by means of a spring or other device. No privy pit shall be allowed to become filled with excreta to nearer than one foot from the surface of the ground, and the excreta in the pit shall

be covered with earth, ashes, lime or similar substances at regular intervals.

(1) *Earthenware Bowls and Seats*.—Sec. 20. In every dwelling hereafter erected, and in every dwelling now existing, all plumbing fixtures shall be properly trapped and vented and all such plumbing made sanitary in every particular. Water-closets hereafter installed shall have earthenware bowls and shall have earthenware seats, or seats made of some nonabsorbent material integral with the bowls, or wooden seats, enameled or varnished or otherwise made nonabsorbent, attached directly to the bowls. All connections shall be of standard lead, iron, steel or brass.

No plumbing fixtures shall be enclosed with woodwork, but the space under and around the same must be left entirely open.

(m) *Cooking in Bath Compartment*.—Sec. 21. It shall be unlawful for any person to cook or to prepare food, or to permit or suffer any person to cook or to prepare food in any bath, shower, slop-sink or water-closet compartment, or in any other place in the building which, in the judgment of the department charged with the enforcement of this act, is detrimental to the proper sanitation of such building.

It shall be unlawful for any person to live or sleep, or to permit or suffer any person to live or sleep, in any cellar, bath, shower or slop-sink room, water-closet compartment, hallway, closet or kitchen, or in any other place which, in the judgment of the department charged with the enforcement of this act, would be dangerous or prejudicial to life or health by reason of want of light, windows, ventilation, drainage, or on account of dampness, offensive, obnoxious or poisonous odors or in any room that shall be so overcrowded as to afford less than the following floor space for each occupant in accordance with the age of the said occupant:



Number of persons over 12 years of age.	Number of persons under 12 years of age.	Superficial floor area required.
1 .....	2	60 square feet
2 .....	4	120 square feet
3 .....	6	180 square feet
4 .....	8	240 square feet
5 .....	10	300 square feet
6 .....	12	360 square feet

Additional floor area in the same ratio shall be provided for additional persons.

(n) *Repapering*.—Sec. 22. No wall, partition or ceiling of any room in any dwelling shall be repapered, calimined, or have any other covering placed thereupon unless the old wall paper or other covering shall have first been removed therefrom, and the said wall, partition or ceiling cleaned, disinfected and freed from bugs, insects or vermin.

(o) *Repairs*.—Sec. 23. Every dwelling shall be maintained in good repair. The roofs shall be kept waterproof and all storm or casual water properly drained and conveyed therefrom to the street sewer, storm drain or street gutter.

Every water-closet, bathtub, sink, slop-hopper or other similar plumbing fixture shall at all times be kept clean, sanitary and in good working order.

(p) *Metal Mosquito Screening*.—Sec. 24. There shall be provided, whenever it is deemed necessary for the health of the occupants of any dwelling or for the proper sanitation or cleanliness of any such building, metal mosquito screening of at least sixteen mesh, set in tight-fitting removable sash, for each exterior door, window or other opening in the exterior walls of the building.

(q) *Garbage Cans*.—Sec. 25. There shall be provided by the occupant or tenant for each dwelling a tight metal receptacle, with close-fitting metal cover, for garbage, refuse, ashes and rubbish as may be deemed necessary by the department charged with the enforcement of this act.

The receptacles shall be kept in a clean condition by the occupants or tenants.

(r) *Sanitary Regulations*.—Sec. 26. Every room, hallway, passageway, stairway, wall, partition, ceiling, floor, skylight, glass window, door, carpet, rug, matting, window curtain, water-closet, compartment or room, toilet room, bathroom, slop-sink or wash-room, plumbing fixture, drain, roof, closet, cellar, or basement in any dwelling, and the lot, and the premises thereof, shall be kept in every part clean and sanitary and free from all accumulation of debris, filth, rubbish, garbage or other offensive matter.

No person shall deposit, or cause or permit any person to deposit, any swill, garbage, bottles, ashes, cans or other improper substance in any water-closet, sink, slop-hopper, bathtub, shower, catch-basin, or in any plumbing fixture connection or drain therefrom, or otherwise to obstruct the same; or to place or cause or permit to be placed any filth, urine or other foul matter in any place other than the place provided for same; or to keep or cause or permit to be kept any urine or filth or foul matter in any room or apartment in any dwelling or in or about the said building or premises thereof for such length of time as to create a nuisance.

Sec. 27. No horse, cow, calf, swine, sheep, goat, rabbit, mule or other animal, chicken, pigeon, goose, duck or other poultry shall be kept in any dwelling house or any part thereof; nor shall any such animal or poultry, nor shall any stable, be kept or maintained within twenty feet of any window or door of such building.

(s) *Fine a Lien*.—Sec. 29. Every fine imposed by judgment under section six of this act upon a dwelling owner shall be a lien upon the house in relation to which the fine is imposed, from the time of the filing of a certified copy of said judgment in the office of the recorder of the county in which said dwelling is situated, subject only to taxes and assessments and water rates, and to

such mortgage and mechanics' liens as may exist thereon prior to such filing; and it shall be the duty of the department charged with the enforcement of the provisions of this act, upon the entry of such judgment, to file forthwith the copy as aforesaid, and such copy upon filing shall be forthwith indexed by the recorder in the index of mechanics' liens.

Sec. 31. Every notice or order in relation to a dwelling shall be served five days before the time for doing the thing in relation to which it shall have been issued.

(t) *Minimum Requirements.*—Sec. 33. The provisions of this act shall be held to be the minimum requirements adopted for the protection, the health and the safety of the community, and for the protection, the health and the safety of the occupants of dwellings. Nothing in this act contained shall be construed as prohibiting the local legislative body of any incorporated town, incorporated city, or incorporated city and county, from enacting from time to time, supplementary ordinances or laws imposing further restrictions, or providing for fees to be charged for permits, certificates or other papers required by this act; but no ordinance, law, regulation or ruling of any municipal department, authority, officer or officers, shall repeal, amend, modify or dispense with any of the provisions of this act.

Nothing in this act contained shall be construed as abrogating, diminishing, minimizing or denying the power of any incorporated town, incorporated city, or incorporated city and county, by ordinance or law, to further restrict the percentage of the lot to be covered by a dwelling within said municipality, the occupation thereof, the materials to be used in its construction, or increasing the floor space to each person occupying a room, the requirements as to sanitation, ventilation, light and protection against fire.

Act of the Legislature, approved May 31, 1917;  
in effect September 1, 1917.

Section 438.—HOTEL AND LODGING HOUSE ACT.—The Legislature of California in 1917 passed a law to regulate the erection, occupancy and use of hotels and lodging houses in this State. On account of its length, it had to be omitted from this book. A printed copy of the law can be obtained from the Secretary of State at Sacramento.

Section 439.—EMBEZZLEMENT BY CONTRACTOR.—Any contractor who appropriates money paid to him for any use or purpose, other than for that which he received it, is guilty of embezzlement, and the payment of laborers and materialmen for work performed or material furnished in the performance of any contract is hereby declared to be the use and purpose to which the contract price of such contract, or any part thereof, received by the contractor shall be applied.

Act of the Legislature, approved May 27, 1919;  
in effect July 27, 1919.

### MECHANICS' LIENS.

Section 440.—THE PERSONS ENTITLED TO LIENS.—Mechanics, material-men, contractors, sub-contractors, artisans, architects, machinists, builders, miners, teamsters and draymen, and all persons and laborers of every class performing labor upon, or bestowing skill or other necessary services, or furnishing materials to be used or consumed in or furnishing appliances, teams and power contributing to the construction, alteration, addition to or repair, either in whole or in part, of any building, wharf, bridge, ditch, flume, aqueduct, well, tunnel, fence, machinery, railroad, wagon road or other structure, shall have a lien upon the property upon which they have bestowed labor or furnished materials, for the value of such labor done and materials furnished and for the value of the use of such appliances, teams or power,



whether at the instance of the owner, or of any other person acting by his authority or under him, as contractor or otherwise; and every contractor, sub-contractor, architect, builder or other person having charge of the construction, alteration, addition to or repair either in whole or in part of any building, or other improvement as aforesaid, shall be held to be the agent of the owner for the purposes of this law.

Act of the Legislature, approved May 1, 1911.

Section 441.—MINING CLAIM LIENS.—Any person who performs labor in any mining claim or claims, or in or upon any real property worked as a mine, either in the development thereof or in working thereon by the subtractive process, or furnishes materials to be used or consumed therein, has a lien upon the same and the works owned and used by the owners for milling or reducing the ores from the same, for the value of the work or labor done or materials furnished by each respectively, whether done or furnished at the instance of the owner of such mining claim or claims or real property worked as a mine, or his agent; and every contractor, sub-contractor, superintendent or other person having charge of any mining or work or labor performed in and about such mining claim or claims or real property worked as a mine, either as lessee or under a working bond or contract thereon, shall be held to be the agent of the owner.

Act of the Legislature, approved May 1, 1911.

Section 442.—LIMIT OF LIENS.—The liens provided for shall be direct liens, and shall not in the case of any claimants, other than the contractor, be limited, as to amount, by any contract price agreed upon between the contractor and the owner except as hereinafter provided; but said several liens shall not in any case exceed in amount the reasonable value of the labor done or material furnished, or both, for which the lien is claimed, nor the price agreed upon for the same between the

claimant and the person by whom he was employed; nor in any case, where the claimant was employed by a contractor, or sub-contractor, shall the lien extend to any labor or materials not embraced within or covered by the original contract between the contractor and the owner, or any modification thereof made by or with the consent of such owner, and of which such contract, or modification thereof the claimant shall have had actual notice before the performance of such labor or the furnishing of such materials.

Act of the Legislature, approved May 1, 1911.

Section 443.—FILING OF CONTRACT AND BOND.—The filing of the original contract, or modification thereof, in the office of the county recorder of the county where the property is situated, before the commencement of the work, shall be equivalent to the giving of actual notice by the owner to all persons performing work or furnishing materials thereunder. In case said original contract shall, before the work is commenced, be so filed, together with a bond of the contractor with good and sufficient sureties in an amount not less than 50 per cent of the contract price named in said contract (which bond shall in addition to any conditions for the performance of the contract, be also conditioned for the payment in full of the claims of all persons performing labor upon or furnishing materials to be used in such work, and shall also by its terms be made to inure to the benefit of any and all persons who perform labor upon or furnish materials to be used in the work described in said contract so as to give such persons a right of action to recover upon said bond in any suit brought to foreclose the liens or in a separate suit brought on said bond), then the court must, where it would be equitable so to do, restrict the recovery under such liens to an aggregate amount equal to the amount found to be due from the owner to the contractor, and render judgment against the contractor and his

sureties on said bond for any deficiency or difference there may remain between said amount so found to be due to the contractor and the whole amount found to be due to claimants for such labor or materials or both. No change or alteration of the work or modification of any such contract between the owner and his contractor shall release or exonerate any surety or sureties upon any bond given under this section.

Act of the Legislature, approved May 1, 1911.

Section 444.—LIMIT TO OWNER'S LIABILITY.—It is the intent and purpose of this section to limit the owner's liability, in all cases, to the measure of the contract price, where he shall have filed or caused to be filed in good faith with his original contract a valid bond with good and sufficient sureties in the amount and upon the conditions as herein provided. It shall be lawful for the owner to protect himself against any failure of the contractor to perform his contract and make full payment for all work done and materials furnished thereunder by exacting such bond or other security as he may deem satisfactory.

Act of the Legislature, approved May 1, 1911.

Section 445.—NOTICE TO OWNER OF LABOR PERFORMED AND MATERIALS FURNISHED.—Any of the persons entitled to liens, except the contractor, may at any time before the time for filing liens expires give to the owner a notice that they have performed labor or furnished materials, or both, to the contractor or other person acting by the authority of the owner, or that they have agreed to do so, stating in general terms the kind of labor and materials and the name of the person to or for whom the same was done or furnished, or both, and the amount in value, as near as may be, of that already done or furnished, or both, and of the whole agreed to be done or furnished, or both, and any of said persons who shall on the written demand of the owner refuse to give such

notice shall thereby deprive himself of the right to claim a lien under this chapter. Such notice must be verified by the claimant, or by some person acting in his behalf, and may be given by delivering the same to said owner personally, or by leaving it at his residence or place of business with some person in charge, or by delivering it to his architect, if any; *provided, however*, that in all cases in which said work is being done under a contract with the state, or with any public board, commission, or officer thereof, or with any political subdivision thereof, such notice must be filed, within said time, in the office of the controller, auditor or other public disbursing officer whose duty it is to make payments under the provisions of such contract. No such notice shall be invalid by reason of any defect in form, provided it is sufficient to inform the owner of the substantial matters herein provided for. Upon such notice being given it shall be lawful for the owner to withhold, and in the case of property which, for reasons of public policy or otherwise, is not subject to liens in this chapter provided for, the owner or person who contracted with the contractor, shall withhold from his contractor sufficient money due or that may become due to such contractor to answer such claim and any lien that may be filed therefor including the reasonable cost of any litigation thereunder.

(a) *Time of Commencing Action.*—No action to enforce the payment of any such claim shall be commenced against the owner, nor against the state or any public board, commission, or officer thereof, nor against any political subdivision of the state or the disbursing officer thereof whose duty it is to make payments under provisions of such contract, prior to the expiration of the period within which claims of lien must be filed for record, nor shall any such suit be commenced later than ninety days following the expiration of such period. Any number of persons who have given such notices may join in the same action and when separate actions are commenced the court first acquiring jurisdiction may con-



solidate them. Upon the demand of the owner the court shall require all claimants to the moneys withheld by the owner in response to such notices to be impleaded in said action, to the end that the respective rights of all parties may be adjudicated and settled therein.

(b) *Pro Rata Distribution When Moneys Insufficient.* In the event the moneys so withheld by the owner shall be insufficient to pay in full the valid demands of all the persons by whom such notices were given, the same shall be distributed among such persons in the same ratio that their respective claims bear to the aggregate of such valid demands. Such pro rata distribution of said moneys shall be made among the persons entitled to share therein, without regard to the order of priority in which their respective notices may have been given or their respective actions, if any, commenced.

(c) *Right to Recover Deficit.*—Nothing contained herein shall be construed to impair in any manner the right of any person by whom such notice has been given to recover from the contractor and the surety or sureties upon his bond any deficit that may remain unpaid after such pro rata distribution; *provided*, that any person who shall wilfully give a false notice of his claim to the owner or who shall wilfully include in his claim work or materials not performed upon or furnished for the property described in such notice shall forfeit all right to participate in the distribution of such moneys.

Act of the Legislature, approved May 10, 1919;  
in effect July 22, 1919.

Section 446.—LAND SUBJECT TO LIEN.—The land upon which any building, improvement, well or structure is constructed, together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof, to be determined by the court on rendering judgment, is also subject to the lien, if at the commencement of the work, or of the furnishing of

the material for the same, the land belonged to the person who caused said building, improvement, well or structure to be constructed, altered or repaired; but if such person owned less than fee simple estate in such land, then only his interest therein is subject to such lien, except as hereinafter provided.

Act of the Legislature, approved May 1, 1911.

Section 447.—WHEN LIEN MUST BE FILED.—Every original contractor, claiming the benefit of this law, within sixty days after the completion of his contract; and every person save the original contractor within thirty days after he has ceased to labor or has ceased to furnish materials, or both, or at his option, within thirty days after the completion of the original contract, if any, under which he was employed, must file for record with the county recorder of the county or city and county in which such property or some part thereof is situated a claim of lien.

Act of the Legislature, approved May 3, 1919;  
in effect July 22, 1919.

Section 448.—CLAIM OF LIEN.—The claim of lien must be in writing, and must contain a statement of his demand after deducting all just credits and offsets, with the name of the owner or reputed owner, if known, also the name of the person by whom he was employed, or to whom he furnished the materials, a general statement of the work done or materials furnished, and also a description of the property to be charged with the lien, sufficient for identification, which claim must be verified by the oath of himself or of some other person.

Act of the Legislature, approved May 3, 1919;  
in effect July 22, 1919.

Section 449.—COMPLETION.—Any trivial imperfection in the said work, or in the completion of any contract by any lien claimant, or in the construction of any building,

improvement or structure, or of the alteration, addition to, or repair thereof, shall not be deemed such a lack of completion as to prevent the filing of any lien. And, in all cases, any of the following shall be deemed equivalent to a completion for all the purposes of this law: the occupation or use of a building, improvement, or structure, by the owner, or his representative accompanied by cessation of labor thereon; or the acceptance by said owner or said agent, of said building, improvement, or structure; or cessation from labor for thirty days upon any contract or upon any building, improvement or structure, or the alteration, addition to, or repair thereof; or the filing of the owner's notice of completion.

Act of the Legislature, approved May 3, 1919;  
in effect July 22, 1919.

Section 450.—OWNER'S NOTICE OF COMPLETION.—The owner shall within ten days after completion of any contract, or within ten days after there has been a cessation from labor thereon for a period of thirty days, file for record in the office of the county recorder of the county where the property is situated, a notice setting forth the date when the same was completed, or on which cessation from labor occurred, together with his name and the nature of his title, and a description of the property sufficient for identification, which notice shall be verified by himself or some other person on his behalf.

The fee for recording the same shall be one dollar.

In case such notice be not so filed, then all persons claiming the benefit of this chapter shall have ninety days after the completion of said improvement within which to file their claims of lien.

Act of the Legislature, approved May 3, 1919;  
in effect July 22, 1919.

Section 451.—HOW LONG LIEN CONTINUES.—No lien binds any property for a longer period than ninety days after the same has been filed, unless proceedings be com-

menced in a proper court within that time to enforce the same; or, if a credit be given, then ninety days after the expiration of such credit; but no lien continues in force for a longer time than one year from the time the work is completed, by any agreement to give credit. In case such proceedings be not prosecuted to trial within two years after the commencement thereof, the court may in its discretion dismiss the same for want of prosecution, and in all cases, the dismissal of such action (unless it be expressly stated that the same is without prejudice) or a judgment rendered therein that no lien exists, shall be equivalent to the cancellation and removal from the record of such lien.

Act of the Legislature, approved May 1, 1911.

Section 452.—WHEN BUILDING WILL BE HELD TO HAVE BEEN CONSTRUCTED AT OWNER'S INSTANCE.—Every building or other improvement or work, constructed, altered or repaired upon any land with the knowledge of the owner or of any person having or claiming any estate therein, and the work or labor done or materials furnished with the knowledge of the owner or persons having or claiming any estate in the land, shall be held to have been constructed, performed or furnished at the instance of such owner or person having or claiming any estate therein; and such interest owned or claimed shall be subject to any lien filed, unless such owner or person having or claiming any estate therein shall, within ten days after he shall have obtained knowledge of such construction, alteration or repair or work or labor, give notice that he will not be responsible for the same by posting a notice in writing to that effect in some conspicuous place upon the property, and shall also, within the same period, file for record a verified copy of said notice in the office of the county recorder of the said county in which said property or some part thereof is situated. Said notice shall contain a description of the property affected thereby sufficient for identification,



with the name, and the nature of the title or interest of the person giving the same. The notice so recorded may be verified by anyone having a knowledge of the facts, on behalf of the owner or person for whose protection the notice is given.

Act of the Legislature, approved May 1, 1911.

Section 453.—CONTRACTOR MAY RECOVER ONLY AMOUNT DUE HIM.—Any contractor shall be entitled to recover, upon a lien filed by him, only such amount as may be due him according to the terms of his contract, after deducting all claims of other parties for work done and materials furnished, as aforesaid, and embraced within his contract; and in all cases where a lien shall be filed under this act for work done or for materials furnished to any contractor, he shall defend any action brought thereon at his own expense; and during the pendency of such action, the owner may withhold from the contractor the amount of money for which such lien is filed; and in case of judgment against the owner or his property upon the lien, the said owner shall be entitled to deduct from any amount due, or to become due by him to the contractor, the amount of such judgment and costs; and if the amount of such judgment and costs shall exceed the amount due by him to the contractor, or if the owner shall have settled with the contractor in full, he shall be entitled to recover back from the contractor, or his bondsmen or sureties on any bond given for the faithful performance of his contract, any amount so paid by him, in excess of the contract price, and for which the contractor was originally the party liable. No act done by such owner in compliance with any of the provisions of this law shall be held to be a prevention of the performance of any such contract by the contractor, or to have exonerated the sureties on any bond given for faithful performance, or for the payment of liens of persons performing labor or furnishing materials, or both; provided that

such act was done in good faith and without design to injure or harass any one.

Act of the Legislature, approved May 1, 1911.

Section 454.—DEFICIENCY OF PROCEEDS UNDER DECREE OF FORECLOSURE.—Whenever on the sale of the property subject to liens, under the judgment or decree of foreclosure of such lien, there is a deficiency of proceeds, judgment for the deficiency may be docketed against the party personally liable therefor in like manner and with like effect as in action for the foreclosure of mortgages.

Act of the Legislature, approved May 1, 1911.

Section 455.—CLAIMANTS MAY JOIN IN SUIT.—Any number of persons claiming liens may join in the same action, and when separate actions are commenced, the court may consolidate them. The court must also allow, as a part of the costs, the money paid for verifying and recording the lien, such costs to be allowed to each claimant whose lien is established, whether he be plaintiff or defendant, or whether they all join in one action or separate actions are consolidated.

Act of the Legislature, approved May 1, 1911.

Section 456.—PERSONAL ACTION TO RECOVER DEBT.—Nothing contained in this law shall be construed to impair or affect the right of any person to whom any debt may be due for work done or materials furnished to maintain a personal action to recover said debt against the person liable therefor; and the person bringing such personal action may take out an attachment therefor, notwithstanding his lien, and in his affidavit to procure an attachment need not state that his demand is not secured by a lien; but the judgment, if any, obtained by the plaintiff in such personal action shall not be construed to impair or merge any lien held by plaintiff; provided, only, that any money collected on said judgment shall be credited

on the amount of such lien in any action brought to enforce the same.

Act of the Legislature, approved May 1, 1911.

Section 457.—FALSE NOTICE OF CLAIM.—Any person who shall wilfully give a false notice of his claim to the owner shall forfeit his lien. Any person who shall wilfully include in his claim work or materials not performed upon or furnished for the property described in the claims shall forfeit his lien.

Act of the Legislature, approved May 1, 1911.

Section 458.—MISTAKES IN STATEMENT NOT TO INVALIDATE LIEN.—No mistake or errors in the statement of the demand, or of the amount of credits and offsets allowed or of the balance asserted to be due to claimant, nor in the description of the property against which the claim is filed, shall invalidate the lien, unless the court finds that such mistake or error in the statement of the demand, credits and offsets, or of the balance due, was made with the intent to defraud, or the court shall find that an innocent third party, without notice, direct or constructive, has since the claim was filed become the bona fide owner of the property liened upon, and that the notice of claim was so deficient that it did not put the party upon further inquiry in any manner.

Section 459.—LIEN LAW TO BE LIBERALLY CONSTRUED. The provisions of this act shall be liberally construed with a view to effect its purpose. They are not intended as a re-enactment of the provisions of former statutes, with the policy heretofore impressed upon the same by the courts of this state, but are intended to reverse that policy to the extent of making the liens provided for direct, and independent of any account of indebtedness between the owner and contractor, thereby making the policy of this state conform to that of Nevada and the other Pacific Coast states.

Act of the Legislature, approved May 1, 1911.

Section 460.—SECURITY FOR PAYMENT BY CONTRACTORS ON PUBLIC WORK.—There is no lien against a public building. But the law provides, instead of a lien, certain security, by means of a bond required from every public contractor. Every contractor, person, company, or corporation, to whom is awarded a contract for the improvement, erection or construction of any building, road, excavating, or other mechanical work for this state, or for any political subdivision or agency of the state shall, before entering upon the performance of such work, file with the commissioners, managers, trustees, officers, board of supervisors, board of trustees, common council, or other body by whom such contract was awarded, a good and sufficient bond, to be approved by such contracting body, officers or board, in a sum not less than one-half of the total amount payable by the terms of the contract; such bond shall be executed by the contractor, and either at least two sureties or by corporate surety as provided by law, in an amount not less than the sum specified in the bond, and must provide that if the contractor, person, company, or corporation, or his or its subcontractor, fails to pay for any materials, provisions, provender or other supplies, or teams, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, that the surety or sureties will pay the same in an amount not exceeding the sum specified in the bond, and also, in case suit is brought upon such bond, a reasonable attorney's fee, to be fixed by the court. Unless such bond is filed as herein provided, no claim in favor of the contractor arising under such contract shall be audited, allowed, or paid by any public officer of this state, or of any political subdivision or state agency, but persons who have in good faith performed work upon such contract, or supplied materials for the execution thereof, shall, upon giving the notice prescribed, be entitled to receive payment of their respective claims.



(a) *Claims of Materialmen, etc.*—Any materialman, person, company or corporation furnishing materials, provisions, provender or other supplies used in, upon, for or about the performance of the work contracted to be executed or performed, or any person, company or corporation renting or hiring teams or implements or machinery for or contributing to said work to be done, or any person who performed work or labor upon the same, or any person who supplies both work and materials, and whose claim has not been paid by the contractor, company, or corporation, to whom the contract has been awarded, or by the subcontractor of said contractor, company, or corporation, may at any time prior to the expiration of the period within which claims of lien must be filed for record, file with the commissioners, managers, trustees, officers, board of supervisors, board of trustees, common council, or other body by whom such contract was awarded, a verified statement of such claims, together with a statement that the same have not been paid. At any time within ninety days following the expiration of the period for filing claims, the person, company or corporation filing the same may commence an action against the surety or sureties on the bond. And upon the trial of any such action, the court shall award to the prevailing party a reasonable attorney's fee, to be taxed as costs, and to be included in the judgment therein rendered.

Act of the Legislature, approved May 10, 1919;  
in effect July 22, 1919.

Section 461.—BUILDING CONSTRUCTED UNDER DISTINCT CONTRACTS—WHO IS ORIGINAL CONTRACTOR.—Where a building is constructed under distinct contracts for the different departments of work involved, each person contracted with is an original contractor, and can file his claim of lien within sixty days after the completion of his contract, irrespective of the time when the entire building is completed. The provisions of the Code re-

lating to mechanics' liens do not contemplate that there can be no original contractor except for the entire work of constructing the building. For the purpose of constructing the building, the owner may enter into different original contracts, for the different departments of work involved. If the owner should enter into a contract with one person for the construction of a building in all its parts, except the painting, and should afterwards enter into a contract with another person to do the painting of the building, each of these individuals would be an original contractor, within the meaning of the law.

Section 462.—ATTORNEY'S FEES.—The court cannot allow, in suits to foreclose mechanics' liens, any attorney's fees to any lien claimant. The law had been for many years that a person foreclosing a mechanics' lien would be allowed reasonable attorney's fees, in both the Superior and Supreme Courts; but the Supreme Court of California rendered a decision, in a suit brought to foreclose a mechanics' lien, declaring the law allowing an attorney's fee unconstitutional and void. In San Francisco, the Builders' Supply Depot foreclosed a lien for materials and labor furnished in the construction of a building. The Superior Court allowed the plaintiff attorney's fees and included such fees in the judgment. The defendants appealed the case to the Supreme Court, and that court decided that attorney's fees could not be allowed, and that the law giving such fees was void. The court says: "The court allowed an attorney's fee in each of the cases, and appellants contend that such allowance was erroneous because the statutory provision directing the allowance of such a fee is unconstitutional and void. In our opinion this contention must be sustained. In a few instances this court has affirmed judgment for plaintiffs in mechanics' lien cases which included attorney's fees; but our attention has not been called to any case where the question of the constitutionality of the statute providing for such fees has been raised, or presented to

the court for adjudication. In the case at bar the question has been for the first time raised." The court decided that the expense of filing the liens may be allowed as costs of suit, but that no attorney fee can be lawfully claimed or allowed. (Decided by the Supreme Court of California in the case of Builders' Supply Depot vs. Dennis O'Conner, which decision is printed in Volume 33, California Decisions, page 97.)

It will be observed in Section 460, that the new law, in effect July 22, 1919, provides for an attorney fee in a suit upon a bond for public work.

Section 463.—WHEN LIEN FOR MATERIALS BEGINS.—A lien for the furnishing of materials relates to the date of beginning to furnish them, and includes all the materials thereafter furnished for the building; and such lien has priority over a mortgage executed after the date of the commencement to furnish the materials.

Section 464.—LIEN FOR MOVING A HOUSE.—Under the law, a contractor performing labor upon a house, by moving it from one place to another, is entitled to a lien thereon.

Section 465.—LIEN ON HOMESTEAD.—A mechanic's lien may be created on a homestead without the joint action of husband and wife. A homestead is free from forced sale, except as provided by the statute. Among the cases in which a homestead may be sold under execution, precisely as though it was not a homestead, are those under judgments obtained upon debts secured by liens of "mechanics, contractors, artisans, architects, builders, laborers of every class, and materialmen."

Section 466.—LIEN AGAINST RAILROAD.—A lien may be filed against a railroad, and where a railroad lies in two counties, it is not necessary to file the lien in both

counties. It is sufficient if the lien is filed in one of the counties only through which the railroad runs.

Section 467.—**ABANDONMENT AND NEW CONTRACT.**—Where a building contract is abandoned, it is immaterial whether the building is subsequently completed by the owner or not; and a subsequent contract by the owner for the completion of the work is as disconnected with the original contract as if it were for the construction of a different building.

Section 468.—**WHAT IS MEANT BY "OWNER."**—When the law requires the claim of lien filed in the recorder's office to state "the name of the owner or reputed owner, if known," it means the name of the person who is the owner at the time the claim is filed. The law does not refer to the owner with whom the contract for the improvement was made, or to the owner at any other time than at the date of filing the claim. The object of requiring the claim to be filed in order to perfect the lien is to give notice of the lien to those interested in the property upon which it is claimed; and, as the owner at the time of filing the claim is the party to be affected by it, rather than one who has parted with the property subsequent to the making of the original contract, it is reasonable to suppose that the Legislature intended the name of the owner at the time the claim is filed, rather than that of any previous owner.

Section 469.—**REAL OR REPUTED OWNER.**—It was not the intention of the Legislature that in the claim of lien filed for record the claimant must state the name of the real owner, at the risk of losing his lien if it shall turn out that he was in error. The provision of the law that the claimant shall give the "name of the owner, or reputed owner, if known," implies that, if he does not know the name of the owner, he may state this fact, and perfect his lien without naming an owner; and also that,



if in good faith he gives the name of a reputed owner, he will not lose his lien if it afterwards appears that some other person was the owner.

Section 470.—PRIORITY OF MATERIAL-MAN'S CLAIM OVER MORTGAGE.—The lien of a material-man for lumber furnished for a dwelling will take precedence of a mortgage on the land executed immediately upon a conveyance thereof, but after the time when the materials were commenced to be furnished, notwithstanding the mortgage was given for the purchase price of the land.

Section 471.—DWELLING-HOUSE — LAND SUBJECT TO LIEN.—Only so much of the land around a dwelling-house is subject to lien as may be necessary for the convenient use and occupation of the house. So, where a house was situated on a forty-acre tract, the Supreme Court has said that the whole tract was not subject to the lien. The statute does not contemplate anything of that kind. It means exactly what it says—a sufficient space around the dwelling for its convenient use and occupation. It does not contemplate that sufficient land around the dwelling-house to support the owner while living there be set apart. Neither the productiveness or non-productiveness of the soil, nor the profit derived from the cultivation of the land, is a material element to be considered in determining the amount of land to be set apart with the dwelling-house. The statute simply allows the dwelling-house and a quantity of land around it sufficient for its convenient use, as the subject of a lien.

Section 472.—ELEVATOR PART OF BUILDING.—Where the original plans for a large building provided for an elevator, and the contract for the construction of the elevator was let when contracts for other work were let, the elevator was a substantial part of the building, and the building was not completed, so that the limitations for filing mechanics' liens would run, until it was finished.

An elevator was called for by the original plans and specifications. A contract was let for its construction at the same time that other contracts were let. It was attached to the building, and formed an integral part of it. The fact that the building might have been used without it, and that it was a convenience merely, is immaterial. Conceding an elevator to be a mere convenience—still conveniences are a material part of the building, when provided for by the plans and specifications; and, so provided for, the building is not completed until the demands of the plans and specifications in this regard have been satisfied.

Section 473.—MATERIALS MUST BE EXPRESSLY FURNISHED FOR STRUCTURE CHARGED WITH LIEN.—In order to enforce the lien of a material-man against a building or structure, the materials must not only have been used in the construction of the building, but they must have been, by the express terms of the contract, furnished for the particular building on which the lien is claimed.

Section 474.—ASSIGNMENT OF MECHANIC'S LIEN.—A mechanic's lien can be assigned, after the claim of lien has been filed for record, but not before. Before the claim of lien has been filed for record, the right to the lien is a mere personal privilege, which the laborer, mechanic, or material-man may exercise or not, as he sees fit; hence it is not the subject of assignment. But after the claim of lien has been filed for record, it can be assigned, and the assignee will have all the rights of the original holder of the lien.

Section 475.—IF BUILDING IS DESTROYED BY FIRE, NO LIEN CAN AFTERWARDS BE FILED.—Where a building in course of construction is destroyed by fire, without any fault of the owner, before any mechanic's lien has been filed thereon, the party who furnished materials for the building, or who performed labor upon it, can have no

lien upon the land upon which the building was being constructed. The benefit conferred upon the owner, by placing the labor and materials in his building, is the true consideration in law for conferring the right of lien upon the parties furnishing such labor and materials. It cannot be said that this consideration exists, where the building is destroyed before completion and before delivery to the owner. In such case, the owner has not derived and can never derive any benefit from the labor and materials furnished. (Decided by the Supreme Court of California in the case of Humboldt Lumber Mill Company vs. Edward Crisp, which decision is printed in Volume 29, California Decisions, page 629.)

Section 476.—LIEN FOR WORK DONE BY ORDER OF HEALTH OFFICER.—A law passed in 1909 provides as follows:

“Any health officer or governing board of any city, town or sanitary district, having served written notice upon the owner or reputed owner of real estate upon which there is a dwelling house, and such owner or reputed owner, after thirty days, having refused, neglected or failed to connect such dwelling house, together with all toilets, sinks, and other plumbing therein, properly vented, and in a sanitary manner, with the adjoining street sewer, may construct the same at a reasonable cost, and the person doing said work at the request of such health officer or governing board has a lien upon said real estate for his work done and materials furnished.”

Act of the Legislature, approved April 19, 1909.

Section 477.—MINER'S LIEN MUST BE UPON THE WHOLE CLAIM.—A mechanic's lien cannot be claimed upon part of a structure, or upon a structure which is part of a larger structure, or upon part of an entire property. Therefore, it has been held by the Supreme Court of California that a claim of lien for materials furnished for the construction of a mill, tramway, board-

ing-house, or reduction works upon a mining claim, should be against the mining claim, and not against the specific structure upon the mine. One contributing labor or materials to a structure which is an appurtenance to a mine, or which, when constructed, is to form part of it, must be held to have anticipated its future use, and cannot claim a lien upon the structure alone. And the procedures provided for acquiring liens upon structures are not, in all respects, applicable to those claiming liens upon mining claims. They cannot all date back to the commencement of the work. On a mine the work is always going on, may have commenced before the laborers were born, and may continue indefinitely. There is no special thirty days, therefore, within which mining lienors must record their notices and claims of lien. The labor cannot generally be said to have contributed to the creation of the property, or added to its value; on the contrary, it may diminish its value—perhaps render it valueless. The Code does not seem to have provided for all the cases which may arise in regard to liens upon mining claims. We can only follow the procedure so far as applicable. For that purpose, the mining claim must stand in the place of the “structure” as the property to be charged with the lien. It is the property which should be described in the notice and claim of lien. One who has built a chimney in a house, or a porch, or a door-step, has helped to build a structure; but he cannot acquire a lien upon these specific structures, and by detached sales destroy the value of the claims depending upon liens upon the whole house. A structure may be a part of another larger structure, and in reference to it constitute but a part of a structure. In such cases it is well settled the lien must cover the entire structure. The mining lien, if it exists at all, extends to the whole claim. Strictly speaking, of course, a mining claim cannot be constructed, altered, or repaired. The intention of the lawmakers seems to have been to give a lien upon the whole claim,



for labor performed on and for materials furnished for and used in any structure, on or in the mining claim. The lien given by the statute is upon the mining claim as a whole, and not upon the separate pieces of work done in its repairs. A claim of lien for material furnished, to be used in a building upon a mining claim, should be against the mining claim, and not against the specific structure upon the mine.

Section 478.—MINING GROUND—PATENTED LAND.—A lien for work and labor may be taken upon mining ground owned by a patentee of the United States. The words “mining claim” in the statute include “mining ground” and all “mines,” whether the title is perfect or not. But the lien will not extend to adjacent land which is not mineral in its character. The words “mining claim,” as used in the law, have no reference to the different stages in the acquisition of the Government title. It includes all mines where no patent has been issued, as in the case of a mining claim in its strict sense, and also where the patent has issued.

Section 479.—PERSONAL PROPERTY LIENS.—Every person who, while lawfully in possession of an article of personal property renders any service to the owner thereof, by labor or skill, employed for the protection, improvement, safe keeping, or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him from the owner for such service; a person who makes, alters, or repairs any article of personal property, at the request of the owner, or legal possessor of the property, has a lien on the same for his reasonable charges for the balance due for such work done and materials furnished, and may retain possession of the same until the charges are paid; and livery or boarding or feed stable proprietors, and persons pasturing horses or stock, have a lien, dependent on possession, for their compensation in caring for,

boarding, feeding, or pasturing such horses or stock; and laundry proprietors and persons conducting a laundry business, have a general lien, dependent on possession, upon all personal property in their hands belonging to a customer, for the balance due them from such customer for laundry work; and veterinary proprietors and veterinary surgeons, shall have a lien, dependent on possession, for their compensation in caring for, boarding, feeding, and medical treatment of animals; and keepers of garages for automobiles, shall have a lien, dependent on possession, for their compensation in caring for and safe keeping such automobiles.

Act of the Legislature, approved April 12, 1911.

Section 480.—FORM OF CONTRACTOR'S BOND.—The following is a form of bond to be given by the contractor to the owner, and to be filed for record together with the contract:

#### CONTRACTOR'S BOND.

KNOW ALL MEN BY THESE PRESENTS: That

we, \_\_\_\_\_, as principal,  
(Here insert name of contractor.)

and \_\_\_\_\_  
(Here insert name of surety.)

and \_\_\_\_\_  
(Here insert name of surety.)

as sureties, are held and firmly bound unto \_\_\_\_\_

\_\_\_\_\_ (Here insert name of owner.)

in the sum of \_\_\_\_\_

(Here insert an amount not less than fifty percent of contract price.)

\_\_\_\_\_  
Dollars, lawful money of the United States of America, to be paid to the said \_\_\_\_\_

(Here insert name of owner.)

for which payment well and truly to be made, we bind ourselves firmly by these presents.

Sealed with our seals and dated the.....day  
of....., 19.....

The conditions of the above obligation are such, that  
whereas, the said.....

(Name of contractor.)

did on the.....day of....., 19.....,  
enter into a contract with the said.....

(Name of owner.)

by the terms of which he agreed to.....

(Here state the substance of the contract, time of pay-  
ments, amounts, progress of work and completion, etc.)

the said contract shall be performed in all respects by  
said contractor as specified therein.

It is also a condition of this bond that the said.....

(Name of contractor.)

shall pay in full the claims of all persons performing  
labor upon or furnishing materials to be used in the work  
specified in said contract; and this bond shall inure to  
the benefit of any and all persons who perform labor  
upon or furnish materials to be used in the work described  
in said contract, and they and each of them shall have a  
right of action to recover upon this bond and the sureties  
named herein, in any lawful suit brought to foreclose a  
mechanic's lien by such persons or in a separate suit  
brought on this bond; and if these conditions above stated  
are fulfilled and fully complied with, then the above obli-  
gation to be void, otherwise to remain in full force and  
virtue.

.....(Seal.)

.....(Seal.)

.....(Seal.)

(Acknowledgment in usual form.)

Section 481.—FORM OF NOTICE TO OWNER OF AGREEMENT TO FURNISH MATERIALS TO CONTRACTOR.—

To .....

(Here insert name of owner.)

Please take notice that in the month of.....,  
19....., I, the undersigned, agreed with.....

(Here insert name of contractor.)

.....  
the contractor with whom you contracted to construct the building at.....Street, San Francisco, California, (of which building you are the reputed owner), to supply him with .....

.....  
(Here describe the materials which were agreed to be supplied.)  
.....

.....  
to be used in constructing said building. That the value of said materials, agreed to be supplied as aforesaid, is the sum of \$.....  
.....

Section 482.—FORM OF NOTICE TO OWNER OF MATERIALS FURNISHED TO CONTRACTOR.—The following is a form of notice to owner of materials furnished to the contractor. This notice may be given by delivering it to the owner personally, or by leaving it at his residence or place of business with some person in charge, or by delivering it to his architect, or by leaving it at the architect's office with some person in charge there:

To .....

(Here insert name of owner.)

Please take notice that in the month of.....,  
19....., I the undersigned sold and delivered at his request

.....  
(Here insert name of contractor.)

the contractor who was at that time constructing that certain building at number.....Mission Street, San Francisco, California, (of which building you are the



reputed owner), all the materials described as follows,  
to-wit: .....

(Here insert description of materials.)

to be used and which material was used by said contractor in constructing said building. And that the value of said materials is \$....., and is and was the value of said materials agreed to be furnished to said contractor by me. That the first delivery of said materials to said contractor for use in said building was on the .....day of....., 19....., and the last lot of said materials was delivered on the.....day of....., 19......

Section 483.—FORM OF NOTICE TO OWNER OF LABOR PERFORMED.—The following is a form of notice to owner to be given by the person having performed labor upon the building at the instance of the contractor. This notice may be given by delivering it to the owner personally, or by leaving it at his residence or place of business with some person in charge, or by delivering it to his architect, or by leaving it at the latter's office with some person in charge there:

To .....  
(Here insert name of owner.)

Please take notice that between the.....day of....., 19....., and the.....day of....., 19....., I, the undersigned, performed labor for.....

(Here insert name of contractor.)

the contractor with whom you agreed to construct that building at number.....Mission Street, San Francisco, California (of which building you are the reputed owner), to-wit: .....

(Here insert the kind of labor performed in the construction of said building.)

and he agreed to pay me \$..... for each day's work of ..... hours. That I worked on said building under said agreement..... days. That the said....., the contractor, has not paid me anything on account of said work. (Or if anything has been paid, state how much.) .....

And he is, at this date indebted to me in the sum of \$..... lawful money of the United States, and the value of said work was and is \$..... per day for each of said..... days, amounting to the sum of \$.....

Dated the..... day of....., 19.....

Section 484.—FORM OF NOTICE OF MECHANIC'S LIEN FOR LABOR.—The following is a form of notice of mechanic's lien for labor performed. The notice of lien must be filed for record with the county recorder of the county or city and county in which the property or some part thereof is situated:

#### NOTICE OF MECHANIC'S LIEN FOR LABOR.

.....  
Claimant

vs.

Notice is hereby given that.....  
residing at....., State of California,  
hereby claims a lien against the interest of.....  
.....in the real property hereinafter described.

That the name of the owner of said real property,  
against whose interest therein a lien is hereby claimed, is

.....  
(Here insert name of owner.)  
and that the interest of said.....

in said real property, as far as known to said lienor, is as follows, to-wit: .....

(Here state nature of interest of owner in the property.)

That the name of the claimant herein is.....  
and his residence is at....., State of California;  
That claimant was employed by.....

(Here state name of employer.)

on the.....day of....., 19....., to perform  
labor in and about the construction of a building on the  
premises hereinafter described, and commenced work on  
said building as a.....on the.....day of  
....., 19....., and performed.....days of  
labor as such....., ending on the.....day of  
....., 19....., at the agreed price of \$.....  
per day;

That the amount unpaid to the said claimant for such  
labor is the sum of \$.....;

That the property subject to this lien, and against  
which the said.....hereby claims a  
lien, is described as follows, to-wit:

All that certain lot or tract of land situate in the City  
of....., County of....., State of  
California, particularly described as follows: (If in a city  
or village, describe the location by street and number if  
known.) .....

(Here describe the property.)

Claimant.

STATE OF CALIFORNIA, }  
COUNTY OF..... } ss.

....., being duly sworn,  
deposes and says, that he is the person named as claimant  
in the foregoing claim of lien; that he has read the fore-  
going claim of lien, and knows the contents thereof, and  
that the statements therein contained are true of his own  
knowledge.

Subscribed and sworn to before me this.....day of  
 ....., 19......

Notary Public in and for the County of  
 ....., State of California.

Section 485.—FORM OF MECHANIC'S LIEN BY CONTRACTOR OR SUB-CONTRACTOR.—The following is a form of notice of mechanic's lien by contractor or sub-contractor. The notice of lien must be filed for record with the county recorder of the county or city and county where the property or some part thereof is situated:

# NOTICE OF MECHANIC'S LIEN BY CONTRACTOR OR SUB-CONTRACTOR.

.....  
 Claimant.

vs.

.....  
 Notice is hereby given that.....  
 residing at....., State of California,  
 hereby claims a lien against the interest of.....  
 .....in the real property hereinafter described:

That the name of the owner of said real property,  
 against whose interest therein a lien is hereby claimed is  
 .....and that the interest of  
 said .....  
 in said real property, as far as known to said lienor, is as  
 follows, to-wit: .....

.....  
 (Here describe nature of interest of owner in the prop-  
 erty.)  
 .....

.....  
 That the name of the claimant herein is.....  
 ....., and his residence is at  
 ....., State of California.

That on the.....day of....., 19.....,  
 claimant entered into a contract with.....



to .....  
 (Here describe work contracted for.)

for the agreed price of \$....., payable as follows,  
 to-wit: .....  
 (Here state terms of payment.)

That claimant completed his said contract on the  
 ..... day of ....., 19.....;

That the amount unpaid to the said claimant on said  
 contract is the sum of \$.....;

That the property subject to this lien and against  
 which the said .....  
 hereby claims a lien, is described as follows, to-wit:

All that certain lot or tract of land situate in the City  
 of ....., County of .....,  
 State of California, particularly described as follows:

(Here describe the property. If in a city or village,  
 describe the location by street and number, if known.)

That the said claimant, .....  
 hereby claims a lien on the property above described for  
 the sum of \$.....

.....  
 Claimant.

STATE OF CALIFORNIA, }  
 COUNTY OF ..... } ss.

....., being duly sworn,  
 deposes and says, that he is the person named as claimant  
 in the foregoing claim of lien; that he has read the fore-  
 going claim of lien, and knows the contents thereof, and  
 that the statements therein contained are true of his own  
 knowledge.

Subscribed and sworn to before me this.....day of  
 ....., 19.....

.....  
 Notary Public in and for the County of  
 ....., State of California.

Section 486.—FORM OF NOTICE OF CLAIM AGAINST PUBLIC IMPROVEMENT FUND.—The law does not allow a lien on public property, property owned by the state or a municipality. But the law does allow a claim on public funds appropriated to certain public improvements, and makes it the duty of the state or municipal officer in charge of said public improvement to withhold from the contractor sufficient money due or that may become due to such contractor to answer the claim, including the reasonable cost of any litigation thereunder. This notice may be given by delivering the same personally to the officer of the municipality whose duty it is to pay the contractor from the public funds:

#### NOTICE OF CLAIM AGAINST PUBLIC IMPROVEMENT FUND.

Notice is hereby given that.....,  
 residing at....., State of California,  
 hereby claims a lien against the interest of.....  
 ....., contractor, in that certain fund  
 appropriated and set apart by the City and County of  
 San Francisco, in the State of California, to pay said contractor for public work, as follows:

That the name of claimant is.....,  
 and his residence is at....., State of California.

That on the.....day of....., 19.....,

.....  
 (Here insert name of contractor.)

entered into a contract with the said City and County of  
 San Francisco to.....

.....  
 (Here state nature of work contracted for.)  
 .....

That between the.....day of....., 19....., claimant furnished materials to said contractor to be used in the construction of said public work, and that the first materials were delivered to said contractor by him on the.....day of....., 19....., and the last materials were delivered on the.....day of....., 19.....

That the materials so furnished consisted of.....

(Here insert description of materials.)

and which said materials were used in the construction of.....

(Here describe the public improvement.)

at....., in the said City and County of San Francisco.

That said materials were of the reasonable value (or agreed price) of.....dollars.

That the amount unpaid to said claimant from said contractor for said materials is the sum of.....dollars, which said sum of.....dollars became due to said claimant on the.....day of....., 19.....

That said ..... hereby claims a lien on all moneys due or to become due the said ..... on said contract with City and County of San Francisco for the sum of.....dollars.

Claimant.

STATE OF CALIFORNIA, }  
COUNTY OF..... } ss.

....., being duly sworn, deposes and says, that he is the person named as claimant in the foregoing claim of lien; that he has read the foregoing claim of lien, and knows the contents thereof, and that the statements therein contained are true of his own knowledge.

Subscribed and sworn to before me this.....day of  
....., 19.....

.....  
Notary Public in and for the County of  
....., State of California.

Section 487.—FORM OF OWNER’S NOTICE OF COMPLETION.—The following is a form of owner’s notice of completion:

NOTICE OF COMPLETION OF WORK.

Notice is hereby given that I, .....  
(Here insert name of owner.)

.....  
as owner of the property herein described, caused a building to be erected upon the property hereinafter described, the contract for doing which work was heretofore made with .....

(Here insert name of contractor.)

and which contract was filed for record in the office of the Recorder of the City and County of San Francisco, State of California, on the.....day of....., 19.....

That the work on said building was completed on the.....day of....., 19.....

That the nature of the title to said property of said owner is as follows, that is to say, he owns it in fee.

That the property hereinbefore referred to, and on which said building is situated, is described as follows, to-wit:

.....  
.....  
.....  
(Here insert description of property.)  
.....  
.....

STATE OF CALIFORNIA,        }  
CITY AND COUNTY OF SAN FRANCISCO. } ss  
....., being duly sworn,  
deposes and says, that he is the owner of the property described in the foregoing notice; that he has read the same



and knows the contents thereof, and that the same is true of his own knowledge.

Subscribed and sworn to before me this.....  
day of....., 19.....

Notary Public in and for the City and County  
of San Francisco, State of California.

Section 488.—NOTICE BY OWNER THAT HE WILL NOT BE RESPONSIBLE FOR IMPROVEMENTS ON HIS PREMISES.—The owner of property, or persons having or claiming any estate in the land upon which improvements are being made or buildings constructed, may within ten days after he shall have obtained knowledge of said construction, labor or repair or work or labor, give notice that he will not be responsible for the same. The following is a form of notice by owner that he will not be responsible:

To Whomsoever It May Concern:

Notice is given that I am the owner of all that property described as follows: .....

(Here insert description of property.)

and I hereby give notice that I will not be responsible for the construction, or for the material or labor, used or to be used, or for any alteration or repair, or for any work, labor, material furnished or to be furnished upon that structure, or addition thereof, now upon said land, or which has been performed, furnished or used in any manner or way upon said land or upon the buildings thereon, or additions thereto, or which may heretofore be performed, furnished or used, upon said land or buildings or additions thereto, or for the services of any architect.

Dated the.....day of....., 19.....

STATE OF CALIFORNIA,        }  
CITY AND COUNTY OF SAN FRANCISCO. } ss.

....., being duly sworn,

(Here insert name of owner.)

deposes and says, that he is the owner of the property described in the foregoing notice; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge.

Subscribed and sworn to before me this.....  
day of....., 19.....

.....  
Notary Public in and for the City and County  
of San Francisco, State of California.

Section 489.—FORM OF ASSIGNMENT OF LIEN.—It has already been stated that a mechanic's lien can be assigned, after it is filed for record, but not before. The following is a form of assignment of lien.

### ASSIGNMENT OF LIEN.

THIS INDENTURE, made the.....day of  
....., 19....., witnesseth:

That ..... , residing  
at ..... , State of California, hereby assigns  
for valuable consideration to.....  
residing at..... , State of California,  
that certain lien and all moneys due or to become due  
thereon, amounting to the date of filing notice of lien to  
the sum of.....dollars, which said notice of lien  
was filed in the office of the clerk of.....County,  
State of California, on the.....day of....., 19.....;  
in which said notice of lien the said.....  
was named as lienor and.....  
as owner, and the real property therein mentioned as the  
subject of said lien particularly described as follows, to-  
wit: .....

(Here describe the property.)

.....

.....

In witness whereof, I have hereunto set my hand and seal the day and year first above written.

.....(Seal.)

STATE OF CALIFORNIA, }  
COUNTY OF.....} ss.

On this.....day of....., 19....., before me personally appeared....., to me known to be the person described in the foregoing instrument, and acknowledged that he executed the same.

.....  
Notary Public in and for the County of  
....., State of California.

Section 490.—RETURN OF PLANS BY RECORDER.—After the expiration of two years from the date of filing in the recorder's office of notice of completion of any building or improvement, the contract, plans and specifications under which the work or improvement was performed may be returned by the recorder to the person filing the same, unless the recorder has been notified in writing to retain the same by some one claiming some interest under such contract or in the property affected thereby; provided, that after the expiration of five years from the date of filing in the recorder's office of any contract, plans and specifications of any building or improvement, the recorder may destroy such contract, plans and specifications if the same have not been delivered as hereinabove provided, unless the recorder has been notified in writing to retain the same by some one claiming some interest under such contract or in the property affected thereby.

Act of the Legislature of California, 1915; in effect August 8, 1915.

Section 491.—STREET WORK LIENS.—Every contractor, person, company or corporation, including contracting owners, to whom is awarded any contract for street work under this act, shall, before executing the said contract, file with the superintendent of streets a good and sufficient bond, approved by the mayor, in a

sum not less than one-half of the total amount payable by the terms of said contract; such bond shall be executed by the principal and at least two sureties, who shall qualify for double the sum specified in said bond, and shall be made to inure to the benefit of any and all persons, companies, or corporations who perform labor on, or furnish materials to be used in the said work of improvement, and shall provide that if the contractor, person, company, or corporation to whom said contract was awarded fails to pay for any materials so furnished for the said work of improvement, or for any work or labor done thereon of any kind, that the sureties will pay the same, to an amount not exceeding the sum specified in said bond. Any laborer, materialman, person, company or corporation, furnishing materials to be used in the performance of said work specified in said contract, or who performed work or labor upon the said improvement, whose claim has not been paid by the said contractor, company or corporation, who executed the said contract, shall severally have a first lien upon and against the assessment, any partial assessment, any reassessment, and any bonds which may be issued to represent any assessment or reassessment. Such laborers, or materialmen may, at any time prior to thirty days after the recording of the assessment for said work, file with the superintendent of streets, a verified statement of his or its claim, together with a statement that the same, or some part thereof, has not been paid. At any time within ninety days after the filing of such claim, the persons, company, or corporation, filing the same or their assigns, may commence an action either to enforce the aforesaid lien, or on said bond, for the recovery of the amount due on said claim, together with the costs incurred in said action, and a reasonable attorney's fee to be fixed by the court, for the prosecution thereof.

Act of the Legislature, approved May 10, 1919;  
in effect July 22, 1919.



Section 492.—LIENS ON LOTS FOR IMPROVEMENTS.—Any person who, at the request of the owner of any lot or tract of land, grades, fills in, or otherwise improves the same, or the street, highway, or sidewalk in front of or adjoining the same, or constructs any areas, or vaults, or cellars, or rooms, under said sidewalks, or makes any improvements in connection therewith, has a lien upon said lot or tract of land for his work done and materials furnished; *provided*, that in cases where the improvement made or work done is subject to acceptance by any municipal board or officer, the time for filing claims of lien shall not commence to run until after such acceptance shall have been made.

Statutes of 1913, Chapter 189.

## ARCHITECTS

Section 493.—COMPENSATION OF ARCHITECT.—The compensation of an architect who draws plans and specifications is left to an agreement between himself and his employer. But if there is no agreement as to what is to be paid for the architect's work, the law will allow him a reasonable compensation for his services. What is a reasonable compensation will depend upon the character of the work he has done, and will be determined by the knowledge and experience of persons skilled in that kind of work. Custom may also enter into the question of the architect's compensation, as where he has superintended the construction of the building, and it is the local custom to pay architects so much for such service; in which case it will be presumed that his services of like character were worth the customary compensation, unless some fact is shown which makes these services worth more or less than the customary rate.

Section 494.—ARCHITECT'S LIEN.—An architect has a lien on the building for his pay, provided he superintends the erection of the building. He must, to enforce his lien,

file the same claim of lien in the office of the County Recorder as is required of laborers, mechanics, and materialmen, referred to in preceding sections.

Code of Civil Procedure, Section 1183.

Section 495.—ARCHITECT CANNOT FILE LIEN AGAINST PUBLIC BUILDING.—If an architect prepares plans and specifications for a public building, such as a Court House, Jail, City Hall, Hall of Records, or School House, he cannot file a lien against any such property, and he must look only to the public funds provided by law for such public improvements. Justice Temple, in the Supreme Court of California, in the case of Mayrhofer against the Board of Education of San Diego, in which case it was decided that in California no lien will be allowed against a public building, stated the reason thus: “The claim is made that public buildings are included both in the word ‘property,’ used in the Constitution, and in the phrase ‘any building,’ used in the Code, and therefore it must necessarily follow that mechanics and material-men are, by these provisions, given a right to a lien upon such buildings. But this ignores the rule of statutory construction, that the State is not bound by general words in a statute, which would operate to trench upon its sovereign rights, injuriously affect its capacity to perform its functions, or establish a right of action against it. The Government was created and shaped by the Constitution. It is not an end in itself, but a mere instrumentality for public services. Its powers and functions exist only for the people. One of its functions is to enact laws for the government of the inhabitants within its limits, thereby affording them protection and advancing their general welfare. The property it holds is simply to enable it to perform the services required of it. It is as much devoted to public use as are the streets and highways, though in a different way. Instead of being the natural and obvious conclusion, that a general law providing remedies for private individuals was intended to

enable a creditor of the State to seize this property for the satisfaction of his debt, it would be a most unnatural inference. The Constitution has itself provided, as the only means which the State has for the payment of its debts, the exercise of the sovereign power of taxation. And for each political subdivision the rule is the same. These revenues are divided into specific funds, and one furnishing labor or material to the State knows to what he must look for payment. He becomes a creditor of a specific fund, and has no right except with reference to such fund." (Decided by the Supreme Court of California in the case of *Mayrhofer vs. Board of Education of San Diego*, which decision is printed in Volume 89 of the *California Reports*, page 110.)

Section 496.—ARCHITECT HAS NO LIEN AGAINST MONUMENT IN PUBLIC PARK.—Where an architect is employed by a contractor for the erection of a monument in a public park, he has no lien for his pay upon the monument or the land on which it is erected. This question was decided by our Supreme Court in the matter of the Garfield Monument, in Golden Gate Park, San Francisco. The Supreme Court said: "The monument, though built by private contribution, was erected upon and as an adornment of one of the public parks of the municipality. It was affixed to the freehold, and thus became a part of the land, the property of the municipality. The monument could not be made subject to a lien." (Decided by the Supreme Court of California in the case of *Griffiths vs. Happersberger*, which decision is printed in Volume 86 of the *California Reports*, page 605.)

Section 497.—PAYMENTS MADE ON ARCHITECT'S CERTIFICATE.—Where a contract provides that payments shall be made on the certificate of the architect—who is required by the contract, among other things, to certify that all the work of the mechanics, laborers, and others employed by the original contractor, has been paid—his cer-

tificate is conclusive of the rights of all parties concerned, unless it can be shown that it was obtained by the owner by collusion or fraud.

Section 498.—ARCHITECT'S CERTIFICATE AS TO LIENS.—Where a building contract provides that for each of the payments a certificate shall be obtained from the architect, and that at the time of the presentation of any certificate there shall not be any liens against the building, and a lien is filed before the last installment, it does not become due while such condition exists; and the amount of the lien must be deducted from the amount due the contractor.

Section 499.—CONDITION AS TO CERTIFICATE MAY BE WAIVED BY OWNER.—The condition in a contract for the erection of a building, that all installments of payments shall be made upon certificates of the architect that the materials and labor have been furnished in accordance with the plans and specifications, may be waived by the owner. The clause as to the production of the certificates is for the benefit of the owner, and he may waive it at his option, and accept other proofs.

Section 500.—ARCHITECT'S PLANS PART OF CONTRACT. When the contract mentions the architect's drawings and specifications, and refers to them for conditions of the agreement, they form an essential part of the building contract, and should be annexed to the contract before filing. The plans and specifications cannot be left in the architect's office, and at the same time be considered as annexed to the contract. If intended to co-operate with and be incorporated into the formal contract, the drawing and specifications must be in fact attached to the contract.

Section 501.—SERVICES OF ARCHITECT.—The services of an architect, in the preparation of drawings, plans, and



specifications for a building and in superintending its erection are "work and labor upon a building," within the meaning of the mechanic's lien law. The architect who superintends the construction of a building performs labor as truly as the carpenter who frames it, or the mason who lays the wall, and labor of a most important character. The language quoted makes no distinction between skilled and unskilled labor, or between mere manual labor and the labor of one who supervises, directs, and applies the labor of others. The general principle upon which the lien laws proceed is, that any person who has contributed by his labor or by furnishing materials, to a structure erected by an owner upon his premises, shall have a claim upon the property for his compensation. An architect who prepares the drawings, plans, and specifications for a building, and superintends its erection, may as truly be said to perform labor on it as any one who takes part in the work of construction.

Section 502.—LIABILITY OF ARCHITECT FOR NEGLIGENCE. An architect must perform his services with diligence and ordinary care. If by his negligence long delay occurs in finishing drawings, plans, and specifications which he has agreed to furnish, and the other party is damaged by the delay, he is liable for the loss. Or if, as superintendent he neglects his duty, to the detriment of his employer, he is also liable to him in damages. The architect is bound to devote to his employer the skill and energy he possesses, and will be liable in damages for any failure in this respect.

Section 503.—CONTRACT FOR PERCENTAGE ON COST OF BUILDING.—Under a contract with an architect to furnish the necessary drawings, specifications, and details for the construction of a building, for a certain percentage of the total cost of the construction of the building, the architect, after furnishing the drawings, etc., in case his em-

ployment is terminated before the completion of the building, is entitled to the agreed commission on the total cost of the building. This was determined by our Supreme Court in a case where Charles I. Havens sued Annie Donahue, at San Francisco, for a commission of two and a half per cent upon the total cost of the building, according to his contract with Mrs. Donahue. He was paid a portion of the commission, but his employment was terminated before the building was completed, and he sued to recover the balance. Mrs. Donahue contended that Havens was only entitled to recover his commission upon the cost of construction so far as the building had proceeded at the time his employment was terminated. The Supreme Court decided that the architect in question had nothing to do with the construction of the building. His contract was simply to furnish the plans, drawings, and specifications, and this he did. (Decided by the Supreme Court of California in the case of Havens vs. Donahue, which decision is printed in Volume 111 of the California Reports, page 297.)

Section 504.—LIABILITY FOR DISCLOSING INTENTION OF OWNER.—An architect employed to furnish plans for the erection of a building on a site on which there is another building, occupied by tenants, is not liable to the owner, by telling people of the intended erection of the new building—the architect having neither contracted nor been requested to keep such a fact secret—for the loss of rent caused by the vacation of the building by the tenants.

Section 505.—TIME SPENT ON PLANS AND SPECIFICATIONS.—Where an architect is compelled to sue for his compensation, and there is no agreement fixing the amount of his pay, he may prove the reasonable value of his services. And evidence as to the length of time spent by an architect on certain plans and specifications is ad-

missible on the question of the value of his services in preparing them, the jury not being limited to a consideration of the expert testimony on that question.

Section 506.—CERTIFICATE AND LICENSE OF ARCHITECT. It is unlawful and a misdemeanor, punishable by fine of not less than fifty dollars nor more than five hundred dollars, for any person to practice architecture without a certificate in this state, or to advertise, or put out any sign or card, or other device which might indicate to the public that he was an architect; provided, that nothing in this act shall prevent any person from making plans for his own buildings, nor furnishing plans or other data for buildings for other persons, provided the person so furnishing such plans or data shall fully inform the person for whom such plans or data are furnished, that he, the person furnishing such plans; is not a certified architect; provided, that nothing in this act shall prevent the employment of an architect residing out of the state of California to prepare plans and specifications for buildings or other structures within the state, conditioned he shall present satisfactory evidence to the board of the district in which the structure is to be erected that he is a competent architect, when such board shall issue to such architect a temporary certificate for such employment, upon the payment of a fee of five dollars. Architects' certificates issued in accordance with the provisions of this act shall remain in full force until revoked for cause, as hereinafter provided for in this act. A certificate may be revoked for dishonest practices, or for gross incompetency in the practice of the profession, which questions shall be determined by the district board of architecture of the district in which the person whose certificate is called in question shall reside, or shall be doing business; and upon a full investigation of the charges by the district board, an opportunity having been given the accused to be heard in his own defense or by counsel; and upon the verdict of at least four members of the district board, the

board may issue its certificate to the secretary of state revoking the certificate of the person accused; and the secretary of state shall thereupon cancel such certificate. And on the cancellation of such certificate, it shall be the duty of the secretary of the district board to give notice of such cancellation to the county recorder of each county in this state, whereupon the recorder shall mark the certificate recorded in his office "Cancelled."

After the expiration of six months the person whose certificate was revoked may have a new certificate issued to him by the secretary of state upon the certificate of the district board by which the certificate was revoked.

Every certificated architect shall have a seal, the impression of which must contain the name of the architect, his place of business, and the words "Certificated architect," with which he may stamp all plans prepared by him.

Each regularly certificated architect shall pay an annual license fee of five dollars, said fee to be paid to the secretary of the board of the district of which he shall be a resident, and shall be payable in advance on January 1, and shall become delinquent the first day of April, of each year, after which date it shall be delinquent; and the certificate of such architects who shall fail to pay their license fees by April 1 of each year, shall be subject to cancellation by said district board, and notice of such cancellation shall be sent to each county recorder of the state of California and to the secretary of state, for cancellation of certificates. And the secretary of the said district shall issue a receipt signed by the president and secretary of the district, and under the seal of the district board, to each architect paying said license fee, showing that said certificated architect has paid his annual license fee, which license receipt shall be displayed in a prominent place in the office of said architect. The fees so collected shall be used to meet the expenses of the state board of architecture.

General Laws of California, page 30.



## PARTNERSHIP.

### Section 507.—WHAT CONSTITUTES A PARTNERSHIP.—

The Civil Code of California defines a partnership as being “the association of two or more persons for the purpose of carrying on business together, and dividing its profits between them.” This definition of partnership is not as comprehensive as many that have been adopted by eminent writers on legal subjects. Judge Story defines a partnership thus: “Partnership, often called co-partnership, is usually defined to be a voluntary contract between two or more competent persons to place their money, effects, labor and skill, or some or all of them, in lawful commerce or business, with the understanding that there shall be a communion of the profits between them.” But whether we consider the definition of Judge Story, or the definition to be found in the Civil Code of California, first quoted, it is very evident that in all one essential thing is omitted. They state that there is to be a division of the profits, but say nothing about sharing the losses. A better definition of partnership, and one more in accord with the established conditions of modern business might be suggested thus: Partnership is the voluntary association of two or more persons for the purpose of carrying on business together, and dividing its profits and sharing its losses between them. For there may be, and often is, a sharing of the profits of a business venture, when there is no partnership. Agents, or brokers, or commission merchants may be offered and accept a share of the profits, as an inducement to greater effort on their part, but this will not constitute them partners with their principals. There must be a community of interest in both the profits and the losses, to constitute a valid partnership.

Section 508.—FORMATION OF PARTNERSHIP.—A partnership can be formed only by the consent of all the parties. As the voluntary consent of all the members is

necessary in the formation of a partnership, it is the law that no new partner can be admitted into a partnership without the consent of every member. If one partner sells his interest in the partnership property, this will not make the purchaser a partner, without the consent of the partner who stays in the business. Neither member of a partnership can force a new member into the firm.

Section 509.—PARTNERSHIP PROPERTY.—The property of a partnership consists of all that is contributed to the common stock at the formation of the partnership, and all that is subsequently acquired by the partnership. But while every partnership presupposes that there must be something brought into the common stock or fund by each member, it is not necessary that each should contribute or contract to contribute money, goods, effects, or other property, towards the common stock; for one may contribute labor, or skill, and another may contribute property, and another may contribute money, according as they shall agree. Sometimes it happens that each partner contributes only skill, or labor, or services, for the common benefit. But all must contribute something, and thus join together either money, or goods, or other property, or labor, or skill. Whether the partners in the first place contribute money, or real or personal property, or only their personal labor and services, if they afterwards acquire any property in the partnership business and with partnership funds, it belongs to the firm, and not to the members individually.

Civil Code, Section 2401.

Section 510.—PARTNER'S INTEREST IN PARTNERSHIP PROPERTY.—The interest of each member of a partnership extends to every portion of its property. One partner has no interest distinct from the other in the assets of the firm. One partner has no control of the partnership assets which the other cannot have. The property

of the partnership is common, held by a community of interest; and it is always first liable for the partnership debts, before any of it can be applied to the individual use or individual debts of either partner.

Section 511.—POSSESSION OF PARTNERSHIP PROPERTY.—Partners are equally entitled to possession of the partnership property. Partners are joint owners and possessors of all the capital stock, funds, and effects belonging to the partnership, as well as of those which belonged to it at the time of its first formation and establishment; so that, whether its stock, funds, or effects be the product of their labors or manufactures, or be received or acquired by sale, barter, or otherwise, in the course of their trade or business, there is an entire community of right and interest between them.

Neither partner has any right or possession of the partnership property to the exclusion of the other. One partner is as much entitled to the possession as the other. Nor would it make any difference if the partnership was dissolved; for in that case both partners would be entitled equally to the possession of the partnership assets, until the partnership affairs could be finally settled up.

Section 512.—PARTNER'S SHARE IN PROFITS AND LOSSES. In the absence of any agreement on the subject, the shares of partners in the profits or losses of the business are equal, and the share of each in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss. Where there is no agreement between the partners, they are to contribute equally to every loss, whether the loss be unpaid advances, or the loss of the original capital brought in; and this is the rule, whether the partners contribute to the capital in equal shares or not. It is essential to the interest of a valid partnership that there should be a sharing of profits and a sharing of losses. Profits and losses will be shared equally, if there is no agreement to the

contrary, no matter what proportion of the firm assets was originally contributed by each. But the partners may agree between themselves that one shall have a larger share of the profits than the other, or that one, if losses occur, shall bear a larger share of the loss than the other, and this agreement will be valid and binding. An agreement to divide the profits of the business implies an agreement for a corresponding division of its losses, unless it is otherwise expressly stipulated. But the law recognizes the fact that the inequality of skill, of labor, or of experience, which the partners may bring into the particular business, may not only justify but positively require an inequality of compensation, and of exemption from loss, as a matter of justice and equity between the parties. And the law has, therefore, wisely not prohibited it; but has left it to the parties to exercise their own discretion in these matters, taking care that no fraud, imposition, or undue advantage is taken by one of the other. And wherever stipulations are fairly made between partners, for unequal sharing of profits and losses, the law will uphold and enforce them as valid agreements.

Civil Code, Sections 2403, 2404.

Section 513.—APPLICATION OF PARTNERSHIP PROPERTY TO PAYMENT OF DEBTS.—Each member of a partnership may require its property to be applied to the discharge of its debts, and has a lien upon the shares of the other partners for this purpose, and for the payment of the general balance, if any, due to him. The debts of a partnership must be paid out of the partnership property, before any portion of it can be applied to the individual debts of the partners. The interest of a partner may be levied upon for the payment of his debts, but when this is done, the creditors of the firm must be first satisfied, before the property can be taken to pay anybody else.

Section 514.—WHAT IS PARTNERSHIP PROPERTY.—All property, whether real or personal, acquired with part-



nership funds, is presumed to be partnership property. There is little difficulty in determining the partnership character of personal or movable property, as a stock of goods, for instance; but there is sometimes difficulty in determining the true character of real estate. The deed to real estate must necessarily be made to and be recorded in the individual names of one or more members of the firm. Cases often occur where the partner in whose name real property stands of record denies that it is partnership property and claims it as his own. Whenever this occurs, it is important to know the law governing the matter. It is the general rule in law that real or immovable property is deemed to belong to the persons in whose name the deed stands. But, as to partners, however the recorded title may stand, or in whose name it may be, real estate bought with partnership funds for partnership purposes will always be considered partnership property.

Section 515.—MUTUAL OBLIGATIONS OF PARTNERS.—The relations of partners are necessarily confidential, and they are always bound to deal in good faith one with another. In all proceedings connected with the formation, conduct, dissolution, and liquidation of a partnership, every partner is bound to act in the highest good faith toward his co-partners. He must not obtain any advantage over them in the partnership affairs, by the slightest misrepresentation, concealment, threat, or pressure of any kind. The contract of partnership has its foundation in the mutual respect, confidence, and belief in the entire integrity of each partner, and his sincere devotion to the business and true interests of the partnership; and good faith, reasonable skill and diligence, and the exercise of sound judgment and discretion, are necessarily and naturally expected of each party to the partnership. Judge Story in his book on partnership says, on this subject: “Good faith not only requires that

every partner should not make any false representations to his partners, but also that he should abstain from all concealments, which may be injurious to the partnership business. If, therefore, any partner is guilty of any such concealment, and derives a private benefit therefrom, he will be compelled to account therefor to the partnership. Upon the like ground, where one partner, who exclusively superintended the accounts of the concern, had agreed to purchase the share of his co-partners in the business for a sum, which he knew, from the accounts in his possession, but which he concealed from them, to be for an inadequate consideration, the bargain was set aside in equity, as a constructive fraud; for he could not in fairness deal with the other partners for their share of the profits of the concern without putting them in possession of all the information, which he himself had, with respect to the state of the accounts and the value of the concern." As illustrations of the good faith which must be observed by one partner to another, so clearly explained by Judge Story, it is a violation of good faith for any partner, in conducting the partnership business, to contract secretly with third persons for any private and selfish advantage and benefit to himself, exclusive of the partnership; for all the partnership property and partnership contracts should be managed for the equal benefit of all the partners. If, therefore, any one partner should contract secretly in a matter of partnership concern for any private advantage or benefit to himself, to the disadvantage or in fraud of his partners, he will be compelled to divide his gains with them. So, if a purchase is made on the partnership account by one partner, who secretly stipulates for and receives any reward or allowance from the seller, for his own private profit, he will be compelled to share with his partners. So, where one partner secretly obtains the renewal of a partnership lease in his own name, he will be held a trustee for the firm in the renewed lease. The obligations of partners, however, whatever they may

be, do not prevent either member of the firm from engaging in other business on his own account, but it must not be such business as interferes with or is in any way injurious to the partnership.

Civil Code, Section 2411.

Section 516.—LIABILITY OF PARTNERS TO ACCOUNT.—Each member of a partnership must account to it, for everything that he receives on account of the firm. While he must render an account of everything he receives, he is at the same time entitled to reimbursement from the firm for everything that he has properly expended for its benefit, and he is entitled to be reimbursed for all losses and risks which he has necessarily incurred on behalf of the firm.

Civil Code, Section 2412.

Section 517.—COMPENSATION FOR SERVICES TO FIRM.—A partner is not entitled to any compensation for services rendered by him to the partnership. A special agreement may be made among the partners that one shall be paid an extra compensation above his share of the profits, for his services, but the obligation rests entirely upon the agreement of the parties. Where there is no agreement of the kind, the law will not allow one partner to take from the partnership assets any compensation for his services. The reason is, that each partner is under obligations to devote his skill and efforts to the promotion of the common benefits of the firm.

Civil Code, Section 2413.

Section 518.—RENUNCIATION OF PARTNERSHIP.—The law of California provides, that a partner may exonerate himself from all future liability to a third person, on account of the partnership, by renouncing, in good faith, all participation in its future profits. To do so, he must give notice to third persons, and to his partner, that he renounces all participation in the future profits of the

firm, and that, so far as may be in his power, he dissolves the partnership, and does not intend to be liable on its account for the future. After a partner has given notice of his renunciation of the partnership, he cannot claim any of its subsequent profits, and his partners may proceed to dissolve the partnership. As to the partners, this renunciation ends the partnership. But as to all other persons the liabilities of the retiring partner continue until proper notice is given. General notice is sufficient as to the public in general; but as to such persons as have had dealings with the firm, actual notice must be given. A partner retiring from the partnership, in order to relieve himself from further liabilities of the firm, must give actual notice of such retirement, and of the dissolution of the partnership, to such persons as have been accustomed to deal with it. It is not essential that such notice shall be given in any particular form; it may be verbal, or in writing; it may be expressed, or it may be implied from circumstances. It must appear, however, with reasonable certainty, that such persons in some way received actual notice. This is so, because established business relations might lead such parties more readily to give the firm credit. Moreover, they are known to the firm, and may be readily, in some proper way, notified. Such notice given in a regular newspaper of general circulation, published in the city, town, or county where the partnership business is carried on, is the usual method of giving information; and this will be sufficient, when continued for a reasonable length of time—this depending somewhat upon the nature, extent, and place of the business.

Civil Code, Sections 2417, 2418.

Section 519.—POWER OF MAJORITY OF PARTNERS.—Where the partnership consists of more than two members, the decision of the majority binds the firm in the conduct of its business. The minority must be consulted



in good faith, and when this is done the majority of the members have a right to control the manner of conducting the business. The majority can govern only in the due course of business, and cannot change the general character of the business against the will of the one dissenting partner.

Civil Code, Section 2428.

Section 520.—AUTHORITY OF INDIVIDUAL PARTNER.—

Every general partner is agent for the partnership in the transaction of its business, and has authority to do whatever is necessary to carry on such business in the ordinary manner, and for this purpose may bind his co-partners by an agreement in writing. Each partner is the general agent of his co-partners as to firm business, and the members of the firm are considered as sanctioning his contracts. Whenever there are written articles, or particular stipulations between the partners, these will regulate their respective power and authority as between themselves, although not, if unknown, in their dealings with third persons. But independently of any such articles or stipulations, each partner possesses an equal and general power and authority in behalf of the firm, to transfer, pledge, exchange, or otherwise dispose of the partnership property and effects, for any and all purposes within the scope and objects of the partnership, and in the course of its trade and business. One partner by virtue of that relation is constituted a general agent for another as to all matters within the scope of the partnership dealings, and has communicated to him, by virtue of that relation, all authority necessary for carrying on the partnership, and all such authority as is usually exercised by partners in the business in which they are engaged. Any restrictions which, by agreement amongst the partners, are attempted to be imposed upon the authority which one possesses as a general agent for the other, are operative only between the partners themselves, and do not limit the authority as to third persons,

who acquire rights by their exercise, unless they know that such restrictions have been made. Each partner may enter into any contracts or engagements on behalf of the firm in the ordinary trade and business; as, for example, by buying, or selling, or pledging goods, or by paying, or receiving, or borrowing moneys, or by drawing, or negotiating, or indorsing, or accepting bills of exchange, and promissory notes, and checks, and other negotiable securities, or by procuring insurance for the firm, or by doing any acts which are appropriate to such trade or business, according to the common course and usages of the business. So, each partner may consign goods to an agent or factor for sale on account of the firm, and give instructions and orders relating to the sale. All such contracts and engagements, acts and things, he has authority to make and do in the name of the firm; and in order to bind the firm, they must ordinarily be made and done in the name of the firm, otherwise they will bind the individual partner only.

Civil Code, Section 2429.

Section 521.—WHAT PARTNER CANNOT DO.—There are some things which the law of California specially declares one partner alone has no authority to do. (1) He cannot make an assignment of any portion of the partnership property to a creditor, or to a third person in trust for creditors. (2) He cannot dispose of the good-will of the business. (3) He cannot dispose of the whole of the partnership property at once, unless it consists entirely of merchandise. (4) He has no authority to do any act which would make it impossible to carry on the ordinary business of the partnership. (5) One partner has no authority to confess a judgment against the partnership. (6) One partner cannot submit a partnership claim to arbitration.

Civil Code, Section 2430.

**Section 522.—PARTNER ENGAGING IN OTHER BUSINESS.**

A general partner, who agrees to give his personal attention to the business of the partnership, may not engage in any business which gives him an interest adverse to that of the partnership, or which prevents him from giving to such business all the attention which would be advantageous to it. A partner may engage in any separate business which does not create an interest adverse to the partnership, and which does not take too much of his time from the firm's business.

Civil Code, Sections 2436, 2437.

**Section 523.—GENERAL LIABILITY OF PARTNER.**—Every general partner is liable to third person for all the obligations of the partnership, jointly with his co-partners.

Civil Code, Section 2442.

**Section 524.—LIABILITY OF ONE WHO PERMITS HIMSELF TO BE HELD OUT AS A PARTNER.**—Any one permitting himself to be represented as a partner is liable to such third persons to whom such representation is communicated, and who, on the faith of it, give credit to the partnership. Thus, one who is not actually a partner may make himself liable for the partnership debts, if he knows that he is being represented by the firm as a partner in it, and allows such representation to be made, and it is acted upon in good faith.

Civil Code, Section 2444.

**Section 525.—BUSINESS UNDER FICTITIOUS NAME.**—The law provides that every partnership transacting business in this State under a fictitious name, or designation not showing the names of the persons interested as partners in such business, must file with the clerk of the county in which its principal place of business is situated, a certificate stating the names in full of all the members of such partnership and their places of residence, and must pub-

lish the same once a week for four successive weeks in a newspaper published in the county, if there be one, and if there be none in such county, then in a newspaper published in an adjoining county. There is one exception, in the case where a commercial or banking partnership, established and doing business in a foreign country, seeks to do business in this State; a foreign firm may use the same partnership name it uses at home, although fictitious, and although it does not show the names of the persons interested as partners. The certificate must be signed by the partners, and acknowledged by them, and must be published within one month after the formation or commencement of the partnership. A new certificate must be made and published whenever there is a change in the membership of the partnership.

Civil Code, Sections 2466, 2467, 2468, 2469.

No person, doing business under a fictitious name, or his assignee or assignees, nor any persons doing business as partners contrary to the provisions of this law, or their assignee or assignees, shall maintain any action upon or on account of any contract or contracts made, or transactions had, under such fictitious name, or in their partnership name, in any court of this state until the certificate has been filed and the publication has been made as herein required.

Act of the Legislature, approved March 23, 1911.

Section 526.—FORM OF CERTIFICATE OF PARTNERSHIP TRANSACTING BUSINESS UNDER FICTITIOUS NAME.—The following is a form of certificate of partnership transacting business under fictitious name, to be filed with the county clerk:

STATE OF CALIFORNIA,                    }  
CITY AND COUNTY OF SAN FRANCISCO. } ss.

John A. Smith and Henry T. Jones, being duly sworn, say that they are partners, doing business in the City and



County of San Francisco, State of California, under the firm name of John A. Smith & Co.; that the names in full of all of the members of such partnership, and their places of residence, are as follows, to-wit: John Augustus Smith, residing at 914 Harrison Street, City and County of San Francisco, State of California, and Henry Thomas Jones, residing at 212 Mission Street, City and County of San Francisco, State of California; that the place where the business of said partnership is transacted is at 400 Market Street, City and County of San Francisco, State of California.

In witness whereof we have hereunto set out hands and seals this.....day of....., 19.....

.....(Seal)

.....(Seal)

STATE OF CALIFORNIA, }  
CITY AND COUNTY OF SAN FRANCISCO. } ss.

On this.....day of....., 19....., before me, a notary public in and for the City and County of San Francisco, State of California, personally appeared John Augustus Smith, and Henry Thomas Jones, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same.

.....  
Notary Public in and for the City and County  
of San Francisco, State of California.

Section 527.—SPECIAL PARTNERSHIPS.—A special partnership may be formed in this State by two or more persons, for the transaction of any business except banking or insurance. A special partnership may consist of one or more general partners and one or more special partners.

Section 528.—CERTIFIED STATEMENT OF SPECIAL PARTNERSHIP.—When a special partnership is formed the partners must sign a certificate stating the name under which the partnership is to be conducted; the general nature

of the business intended to be transacted; the names of all the partners, and their residences, specifying which are general and which are special partners; the amount of capital which each special partner has contributed to the common stock; and the time at which the partnership will begin and end. This certificate must be acknowledged and recorded in all the counties in which the firm has places of business. An affidavit of each of the partners must be filed for record with the certificate, stating that each of the special partners has paid in the sum named in the certificate. The certificate, or a statement of its substance, must also be published in a newspaper in the county where the original certificate is filed; and if there is no newspaper in that county, then the publication must be made in the nearest newspaper; and this publication must be made once a week for four successive weeks, beginning within one week from the time of filing the certificate for record.

Civil Code, Sections 2479, 2480, 2481, 2483, 2484.

Section 529.—SPECIAL PARTNERSHIP—LIABILITY OF THE PARTNERS.—The general partners in a special partnership are liable to the same extent as partners in a strictly general partnership. They are each liable for all the debts of the firm. But a special partner is only liable for the debts of the firm to the extent of the capital he has put into the business. A special partner may do things which will make him liable as a general partner; for if it appears that he has wilfully made a false statement in the certificate of partnership, or if he wilfully interferes with the business of the firm, or if he represents himself as a general partner in the firm, he will be liable as a general partner; that is, he will be liable for all debts of the firm.

Civil Code, Sections 2500, 2501.

Section 530.—RIGHTS OF SPECIAL PARTNERS.—Only the general partners have authority to transact the business of a special partnership. The special partner, while he

has no right to engage in or interfere with the authority of the general partners to conduct the business of the firm, yet may at all times investigate the partnership affairs, and advise his partners, or their agents, as to their management of the business. A special partner may lend money to the partnership, or advance money for it, and take from it security, and as to such loans or advances he will have the same rights as any other creditor; but in case of the insolvency of the firm, all other claims which he may have against it will be postponed until all other creditors are satisfied. In all matters relating to a special partnership, the general partners may sue and be sued alone, as if there were no special partners. No special partner, under any pretense, has any right to withdraw any of the capital invested by him in the partnership, during its continuance.

Civil Code, Sections 2489, 2490, 2491, 2492, 2493.

Section 531.—FORM OF CERTIFICATE OF SPECIAL PARTNERSHIP.—The following is a form of the certified statement of special partnership, to be made and recorded:

STATE OF CALIFORNIA, }  
COUNTY OF LOS ANGELES } ss.

Henry S. Green, John A. Jones, and Alfred T. Smith, being duly sworn, say: That they have formed a special partnership to do business in the City of Los Angeles, State of California, under the firm name of Henry S. Green & Co.; that the name under which said partnership is to be conducted is Henry S. Green & Co.; that the business intended to be transacted by said partnership is the dealing in general merchandise, and the buying and selling at retail of groceries and dry goods; that the names of all the partners, general and special, and the residence of each of said partners, are as follows, to-wit: Henry Samuel Green, a general partner, residing at No. 200 Hill Street, Los Angeles, State of California; John Arthur Jones, a general partner, residing at No. 300 Green Street, Los Angeles, State of California; and

Alfred Thomas Smith, a special partner, residing at No. 500 Mason Street, City and County of San Francisco, State of California; that the amount of capital which the said Alfred Thomas Smith contributed to the common stock of said partnership is the sum of \$5000; and that said partnership will begin on the.....day of ....., 19....., and end on the.....day of ....., 19......

In witness whereof, we have hereunto set our hands and seals this.....day of....., 19.....

.....(Seal.)  
 .....(Seal.)  
 .....(Seal.)

STATE OF CALIFORNIA, }  
 COUNTY OF LOS ANGELES } ss.

On this.....day of....., 19....., before me, a notary public in and for the County of Los Angeles, State of California, personally appeared Henry Samuel Green, John Arthur Jones, and Alfred Thomas Smith, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same.

.....  
 Notary Public in and for the County of  
 Los Angeles, State of California.

Section 532.—AFFIDAVIT THAT SPECIAL PARTNER HAS PAID IN HIS SHARE.—An affidavit of each of the partners must be filed for record with the certificate, stating that each of the special partners has paid in the sum named in the certificate. The following is a form of this affidavit:

### AFFIDAVIT OF HENRY S. GREEN.

STATE OF CALIFORNIA, }  
 COUNTY OF LOS ANGELES } ss.

Henry Samuel Green, being duly sworn, says: that he is a general partner named in the certified statement of



special partnership this day filed for record, in which he and John Arthur Jones are named as general partners and Alfred Thomas Smith as special partner, under the firm name of Henry S. Green & Co.; that the said Alfred Thomas Smith, named in the said certificate of partnership, as a special partner, has paid in the sum of \$5000, the sum named in said certificate.

Subscribed and sworn to before me this.....day  
of....., 19.....

Notary Public in and for the County of  
Los Angeles, State of California.

### AFFIDAVIT OF JOHN A. JONES.

STATE OF CALIFORNIA, }  
COUNTY OF LOS ANGELES } ss.

John Arthur Jones, being duly sworn, says: that he is a general partner named in the certified statement of special partnership this day filed for record, in which he and Henry Samuel Green are named as general partners and Alfred Thomas Smith, as special partner, under the firm name of Henry S. Green & Co.; that the said Alfred Thomas Smith, named in the said certificate of partnership as a special partner, has paid in the sum of \$5000, the sum named in said certificate.

Subscribed and sworn to before me this.....day  
of....., 19.....

Notary Public in and for the County of  
Los Angeles, State of California.

### AFFIDAVIT OF ALFRED T. SMITH.

STATE OF CALIFORNIA, }  
COUNTY OF LOS ANGELES } ss.

Alfred Thomas Smith, being duly sworn, says: that he is the special partner named in the certified statement of

special partnership this day filed for record, in which he is named as special partner and Henry Samuel Green and John Arthur Jones, as general partners, under the firm name of Henry S. Green & Co.; that he, the said Alfred Thomas Smith, named in the said certificate of partnership, as a special partner, has paid in the sum of \$5000, the sum named in said certificate.

Subscribed and sworn to before me this.....day  
of....., 19.....

Notary Public in and for the County of  
Los Angeles, State of California.

Section 533.—INTEREST AND PROFITS OF SPECIAL PARTNER.—A special partner may receive such interest on his money invested, and such proportion of the profits, as may be agreed upon between him and the general partners.

Section 534.—MINING PARTNERSHIPS.—A mining partnership is different in its nature and creation from the ordinary partnerships known to commercial life. An express agreement to become partners, or to share the profits and losses, is not necessary in the creation or existence of a mining partnership. The law of California provides, that a mining partnership arises from the ownership of shares or interests in the mine, and the working of the mine for the purpose of extracting the mineral from it. The miners must own or have acquired the mine, and be actually engaged in working it; and when they do so, the law looks upon their relations as those of a partnership, without the necessity of a written or oral agreement to share profits and losses. It is not necessary that the miners hold the legal title to the mine in order to become partners. If they acquire a mining claim, though it is not patented, and may never be, still they are mining partners if they actually engage in working the

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mine for the purpose of extracting the mineral from it. The mining partners need not all have equal interests in the profits. If a number of miners acquire a claim and work it, on shares, whether the shares be equal or not, it is a mining partnership. The essential difference between the ordinary partnerships and a mining partnership is, that in a mining partnership there is no choice of partners. One member of a mining partnership may sell his interest or share in the mine, and the partnership is not dissolved, and as to those who continue to work the mine, the partnership continues to exist; while in a general partnership, the sale by one partner dissolves the partnership, because none of the general partners can force a new member into the firm.

Civil Code, Sections 2511, 2512.

Section 535.—PROFITS AND LOSSES IN MINING PARTNERSHIP.—A mining partner shares in the profits and losses in proportion to the interest or share which he owns in the whole mine, and the proportion which his interest bears to the whole partnership capital or whole number of shares.

Section 536.—LIABILITY OF MINING PARTNERS.—Each mining partner is, as to third parties, liable for the entire debts of the partnership. If one mining partner pays the debts, or advances money for the use of the partnership, he has a lien on the property of the partnership for his money. And the law declares that this lien shall exist, even though there is an agreement among the partners that it must not.

Civil Code, Section 2514.

Section 537.—MINING GROUND PARTNERSHIP PROPERTY. The mining ground owned and worked by partners in mining, whether purchased with partnership funds or not, is partnership property. But a mere agreement to work a mine in the future, upon the happening of a conting-

ency, does not make it partnership property. Justice Temple, of the Supreme Court of California, in the mining case of *Dorsey vs. Newcomer*, speaking of the partnership property of miners, said: "It is not always easy to determine what constitutes the partnership property of a mining partnership. The statute provides that the mining ground owned and worked by partners in mining, whether purchased by the partnership or not, is partnership property. It does not follow that property other than the ground owned and worked may not also be partnership property. No doubt, other property acquired by the partnership for the purpose of aiding in working the mining claim, such as a mill or mill site, would also be property of the partnership. So, other mining ground acquired for the purpose of working with the mining ground already being worked, and so situated that it can be worked with the original claim as parts of one mine, would be partnership property. And, generally, property acquired by the partnership by the use of partnership funds, as distinguished from individuals constituting the firm, may be so regarded. But the statute evidently distinguishes between ground owned or acquired for the purpose of working, and ground actually worked. It is only the last that in general can be regarded as partnership property, when not acquired by the partnership, or by the use of its funds." (Decided by the Supreme Court of California, in the case of *Thomas B. Dorsey vs. J. T. Newcomer*, which decision is printed in Volume 121 of the *California Reports*, page 213.)

Civil Code, Section 2515.

**Section 538.—NEW MEMBER OF MINING PARTNERSHIP.** One of the partners in a mining partnership may sell his interest in the mine and business without dissolving the partnership. And the purchaser, from the date of his purchase, becomes a member of the partnership. But the purchaser of an interest in the mining ground takes it subject to the liens existing in favor of the partners,



for debts due the creditors, or advances made for the benefit of the partnership, of which he has notice; and the purchaser of the interest of a partner in a mine when the partners are engaged in working it, is charged by the law with notice of all liens resulting from the relation of the partners to each other and to the creditors of the partnership.

Civil Code, Sections 2516, 2517, 2518.

No member of a mining partnership, or any agent or manager of the firm, can bind the partnership by a contract in writing, except by express authority from all the members of the firm. He cannot bind the partnership by making a promissory note, or by any agreement in writing affecting the partnership property.

Civil Code, Section 2519.

Section 539.—OWNERS OF MAJORITY OF SHARES GOVERN CONDUCT OF MINE.—The decision of the partners owning a majority of the shares or interests in a mining partnership will always control the conduct of its business. As the mining property can only be used as a whole, it is indispensable in conducting the business of mining that those owning the larger portion of the property should have the power to control, in case all cannot agree, for otherwise the work might become wholly discontinued at any time. The powers of the individual members of a mining partnership are much more limited than are the powers of the individual members of a purely commercial or trading partnership. What may be necessary and proper for carrying on the business of mining, for the joint benefit of all concerned, must always be determined by those owning and holding in the aggregate the majority interest in the property. And if the powers which are thus exercised by the majority are not necessary and proper for the success of the enterprise, those whose interests may be imperiled or disastrously affected by

the improper conduct of the majority have the right to resort to the courts for redress and protection.

Civil Code, Section 2520.

Section 540.—DURATION OF PARTNERSHIP.—If no term is prescribed by agreement for the duration of a partnership, a general partnership will continue for an indefinite time, until dissolved by mutual consent, or by a partner, or by the law.

Section 541.—TOTAL DISSOLUTION OF PARTNERSHIP.—A general partnership is dissolved as to all of the partners: (1) By lapse of the time prescribed by agreement for its duration; (2) By the expressed will of any partner, if there is no such agreement; (3) By the death of a partner; (4) By the transfer to a person, not a partner, of the interest of any partner in the partnership property; (5) By war, or the prohibition of commercial intercourse between the country in which one partner resides and that in which another resides; or, (6) By a judgment of dissolution. But, as we have already seen, there is an exception in the case of a mining partnership, which is not dissolved by the death of one partner or the sale of the partner's interest.

Civil Code, Section 2450.

Section 542.—PARTIAL DISSOLUTION OF PARTNERSHIP.—A general partnership may be dissolved, as to himself only, by the expressed will of any partner, notwithstanding his agreement for its continuance; subject, however, to liability to his co-partners for any damage caused them.

Civil Code, Section 2451.

Section 543.—WHEN PARTNER ENTITLED TO DISSOLUTION.—A partner is entitled to a dissolution: (1) When he, or another partner, becomes legally incapable of contracting; (2) When another partner fails to perform his

duties under the agreement of partnership, or is guilty of serious misconduct; or, (3) When the business of the partnership can be carried on only at a permanent loss.

Partners may, at the time of forming the partnership, prescribe the period for which it shall endure, and how and when it may be determined. Its continuance may be for a definite term, or it may be at the will of the partners; and it is well settled that a partnership at will may be terminated at the pleasure of any member of the firm, so long as he acts without fraudulent intent. As partnerships are formed by the mutual agreement of all the partners, so may they be altered, modified, or dissolved, by like agreement. A partnership for a definite period may be dissolved by mutual consent. But an express agreement to dissolve is not necessary. Words and acts implying such intention are sufficient. If partners, by mutual consent, cease to do business, and divide the partnership property, this amounts to a dissolution, as much as if done by an express agreement to that effect. A partnership is none the less ended by reason of the fact that certain specific property of the firm, after a settlement and adjustment of the firm business, remains unsold, and that each partner, under the settlement, retains his proportionate part of such property.

Notwithstanding that a time for the dissolution of a firm may be fixed by partnership articles, or that the partners may dissolve by agreement, express or implied, before such time, the partnership may be dissolved by the happening of any of the events which, in law, are held to effect that result. Thus, the withdrawal of a partner causes a dissolution of the firm; and the introduction of a new member into an existing partnership works its dissolution, and the creation of a new partnership. If both partners refuse to perform their part of the partnership agreement, there is no law requiring, or recognizing, a continuance of the partnership. A firm is dissolved when it ceases to do the business for which it was organized.

The mere fact, alone, that a partnership is insolvent does not operate as a dissolution of the firm. There must be a stoppage of payment, assignment, or act amounting in law to a declaration of insolvency, to work a dissolution. An assignment, however, by co-partners, for the benefit of their creditors, of the entire firm assets, except property exempt from execution, operates as a dissolution of the partnership.

The mere filing of an attachment against partnership property does not dissolve the partnership; nor will the mere seizure of such property under a writ of attachment have that effect; and it has been held by the courts that the seizure under execution of the interest of a defendant in partnership property does not dissolve the partnership; but a levy of execution against one partner on his interest in the firm, and the sale of such interest, does dissolve the firm.

A sale which practically includes all of the property used by a firm in carrying on its business, whether made by the firm or by a member, operates as a dissolution of the partnership. The destruction of the property which is the subject matter of the co-partnership is another cause which will work a dissolution. A court of equity may decree the dissolution of a partnership during the term for which it was entered into, and declare it void, where there is fraud, imposition, misrepresentation, or oppression in the original agreement.

Equity has jurisdiction, where a person has been induced by fraudulent representation to enter into a partnership, to rescind the contract at his instance, and put an end to it. Misrepresentation of material facts is a ground for setting aside a partnership contract. A person who has been induced to enter into a partnership, by a material misrepresentation of the other party, is entitled to have the contract set aside.

One partner cannot, by any act of his own, and at his will, terminate a partnership for a fixed period, before that period has elapsed. A partnership agreement, like



any other, is binding upon the parties, and they must adhere to its terms. Neither partner is at liberty to recede from it against the will of the other, without a sufficient cause.

A court of equity may decree a dissolution of the partnership, for causes arising subsequently to the formation of the contract, founded upon misconduct, or fraud, or violation of duty, of one partner; or on account of the inability or incapacity of one partner to perform his obligations and duties, and to contribute his skill, labor, and diligence in the promotion and accomplishment of the objects of the partnership; or for the existence of facts rendering it impracticable to carry on the undertaking for which the partnership was formed.

A court of equity will dissolve a partnership where all confidence between the partners has been destroyed, so that they cannot proceed together in prosecuting the business for which it was formed. And this result follows, not only where such want of confidence is occasioned by the misconduct or gross mismanagement of the partner against whom the dissolution is sought, but also when such want of confidence and distrust has arisen from other circumstances, provided it has become such as cannot probably be overcome. But a partner who, by his own wilful misconduct, has caused such want of confidence, will not be allowed to take advantage of it to procure a dissolution. If a partner's acts are inconsistent with the duty of partners, and of a nature to destroy the mutual confidence which ought to subsist between them, and makes it impossible that the business can be conducted in partnership with benefit to either party, a court of equity will decree a dissolution before the expiration of the term for which the partnership was entered into. The same is true where the circumstances have so changed as to render it impossible to carry on the partnership without injury to all the partners. A partnership will be dissolved where one of the firm has deliberately resolved to break up and ruin its business, or

where ill feeling between the partners renders it impossible to conduct the business successfully.

The wrongful exclusion of one partner from the business, or refusal to allow him to inspect the books, is a cause for dissolution of the partnership.

It is a sufficient cause for dissolution of a partnership that it clearly appears that the business for which the partnership was formed is impracticable, or cannot be carried on except at a loss.

A partner's failure or refusal to comply with the terms of the partnership agreement as to contributing capital or funds required for the successful prosecution of the business is also a cause for dissolution, whether such failure or refusal arises from disinclination or inability. Thus, if a partnership is formed for the purpose of buying and selling land, each partner to furnish an equal share of money, the refusal of one to make the necessary advances would be a good cause for putting an end to the partnership. And, if a partner refuses to manufacture articles as agreed, so as to make the works profitable, it is a cause for dissolution.

If a partner, by reason of his infirmities, becomes totally incapable of performing the partnership duties incumbent upon him, a dissolution will be decreed, not only to protect the partner who has become incapacitated, but to relieve the other from the difficult position in which he is placed. Confirmed and incurable insanity is a ground for dissolving a partnership, and when it is shown that a partner is so far disordered in his mind as to be incapable of conducting the firm business according to the terms of the contract of copartnership, a court of equity will dissolve the firm. After an adjudication of the insanity of one partner, the continuing partner may apply for a dissolution of the partnership, if he so desires; or, if it is a partnership at will, he may dissolve it of his own volition; but where one partner has been adjudged insane, and the remaining partner continues the business as before, without objection or notice to

any one, it is presumed that he did not intend a dissoluporary, and whether it would become practicable for him to resume business. So long as he thus continues to carry on the business, without seeking to dissolve the partnership, there is no dissolution, nor is he excused from accounting for the profits derived by him from the business of the firm.

Partners may provide in their contract that certain acts or conduct shall operate to dissolve the partnership; but, in the absence of special agreement, courts may dissolve a partnership for misconduct, gross neglect, or breach of partnership duty. As a general rule, gross misconduct, want of good faith, or gross want of diligence, or such cause as is productive of serious and permanent injury to the partnership concerns, or renders it impracticable to carry on the partnership business, is proper tion of the firm, but that he waited to determine whether the incapacity of his partner would prove merely temground for dissolution. Habitual intoxication, extravagance, and dishonesty are good grounds for dissolution.

If quarrels, dissensions, or chronic hostility between partners are of such serious and permanent character as to prevent the profitable continuance of the partnership business, on the terms of the agreement between the partners, a dissolution will be decreed. Violent disputes, ill will, or dissensions between the partners, which entirely prevent the beneficial effects of a connection, are sufficient to justify a decree of dissolution. A dissolution should be decreed where it appears that the partners are in a constant state of quarrel; that one makes a rule of going to the office at an early hour, opening all the letters addressed to the firm, and failing to communicate the contents to the other; that the other partner is always arbitrary in his action; and that, generally, what one wants to do the other objects to.

A court of equity will not dissolve a co-partnership unless cause is shown, and the mere desire of a partner for a dissolution is not a sufficient cause. It is not for

every act of misconduct on the part of one partner that a court of equity, at the instance of another partner, will dissolve the partnership and close up the affairs of the company. The court will require a strong case to be made, and it is a general principle that a court has no jurisdiction to make a separation between partners for trifling causes, or temporary grievances, involving no permanent mischief. Thus, it is not sufficient cause for the dissolution of a firm that a loss occurs to it through a partner's mere error of judgment, or that there is a mere dissatisfaction between partners. A court of equity will not decree a dissolution of a partnership, unless it is shown that the defendant has substantially failed in the performance of his part of the partnership agreement.

Civil Code, Section 2452.

Section 544.—NOTICE OF DISSOLUTION OF PARTNERSHIP.—The liability of a general partner for the acts of his co-partners continues, even after a dissolution of the co-partnership, in favor of persons who have had dealings with and given credit to the partnership during its existence, until they have had personal notice of the dissolution. The liability of a partner may extend beyond the indebtedness existing at the dissolution, and include indebtedness subsequently contracted in favor of persons relying on the partnership, and who did not have any notice of its dissolution. Those who have dealt with the firm before dissolution are entitled to hold all the partners liable for debts contracted afterwards in good faith, in the belief that the firm still continues, and in reliance upon its assets and the personal responsibility of its members. As to such customers, actual notice is required to exempt from liability any member of the firm, though he has retired. The fact that notice was mailed to such customer, or was published in a newspaper of general circulation, and such newspaper mailed to a creditor with a red line drawn about the notice for the purpose of attracting attention to it, or that the dissolution had



attained general notoriety, cannot defeat the customer's claim to hold all the members of the firm answerable, if it appears that he did not have actual notice of the dissolution. Persons who have not dealt with the firm before its dissolution are not entitled to actual notice, and cannot hold a retiring member answerable if notice of the dissolution has been given by publication in a newspaper. A change of the partnership name, which plainly indicates the withdrawal of a partner, is sufficient notice of the fact of such withdrawal to all persons to whom it is communicated; but a change in the name, which does not contain such an indication, is not notice of the withdrawal of any partner.

Civil Code, Sections 2453, 2454.

Section 545.—WINDING UP THE PARTNERSHIP AFFAIRS. After the dissolution of a partnership, its affairs must be wound up, and its property disposed of. No new contracts are to be made, no new business transacted; but only the final disposition of the assets of the firm, the collection of accounts, the payment of the debts, the distribution of the property left over. Any member of a general partnership may act in the winding up of its affairs. By consent of all the partners, the final settlement of the affairs of the firm may be committed to one of the partners, and the other partners will then have no right to act. The partner authorized to act in liquidation may collect, compromise, or release any debts due to the partnership, and pay or compromise any claims against it, and dispose of the partnership property; he may also indorse, in the name of the firm, promissory notes or other obligations held by the partnership, for the purpose of collecting them, but he cannot create any new obligation in the name of the firm.

Civil Code, Sections 2459, 2460, 2461, 2462.

Section 546.—RIGHTS OF PARTNERS AFTER DISSOLUTION.—Each partner, after the dissolution of the firm, has an equal right to the possession of its assets. And

if the liquidation of the partnership affairs is not left in the hands of certain members of the firm, by consent of all the partners, then each partner has the right to do whatever acts are necessary to complete the business of the partnership, and fulfil its contracts; and, as each partner is interested in seeing the business closed, by the collection of the assets, and the payment of the firm's obligations, and a division of the remainder, each may take steps looking to that end, and exercise the power vested in him as a partner to dispose of and preserve the property of the firm, and pay its obligations. After dissolution of the firm each of the partners has the right to enter into the same or any other business on his own account. If property of the firm is in possession of one of the members of the partnership, he has the power to take such measures as are necessary for its preservation and protection. Each of the partners, in the absence of an agreement to the contrary, is bound to give his services to the business of the firm, and this remains true after its dissolution so far as is necessary to the winding up of its affairs. After the dissolution of the partnership, each partner remains liable for the indebtedness of the firm, to the same extent as before.

Section 547.—FORM OF PARTNERSHIP AGREEMENT.—  
The following is a form of partnership agreement:

Articles of Co-partnership, made and entered into  
the.....day of....., 19....., between  
....., of .....  
State of California, and.....  
....., of the same place:

The said parties above named have agreed, and by these presents do agree, to become partners in business together, under and by the name, firm, and style of (here state name of firm), in the business of (here state the kind of business to be transacted by the firm), at (here state name of place where the business is to be conducted), State of California; their co-partnership to commence on the.....day of....., 19.....,

and to continue.....years thence next ensuing, fully to be completed and ended, and to that end and purpose the said parties have delivered in as capital stock the sum of.....Dollars, gold coin of the United States, share and share alike, to be used and employed in common between them, for the support and management of the said business, to their mutual benefit and advantage. And it is agreed, by and between the said parties, that at all times during the continuance of their co-partnership, they and each of them will give their attendance, and do their and each of their best endeavors, and to the utmost of their skill and power exert themselves, for their joint interest, profit, benefit, and advantage, in the business aforesaid; that they shall and will, at all times during their co-partnership, bear, pay, and discharge, equally between them, all rents and other expenses that may be required for the support and management of the said business; that all gains, profits, and increase that shall come, grow, or arise from or by means of the said business, shall be divided between them, share and share alike; and all loss that shall happen to their said joint business, by bad debts, or otherwise, shall be borne and paid equally between them; that there shall be kept, at all times during the continuance of their co-partnership, perfect, just, and true books of accounts, wherein each of the said co-partners shall enter and set down, as well all money by them, or either of them, received, paid, laid out, and expended, in and about the said business, as also all the goods, wares, merchandise, and commodities, by them, or either of them, bought or sold, by reason or on account of the said business, and all other matters and things whatsoever, to the said business and management thereof in anywise belonging; which said books shall be used in common between the said co-partners, so that either of them may have access thereto without any interruption or hindrance of the other; that the said co-partners, once in each year, during the continuance of the said co-partnership, as aforesaid, to-wit: on the.....day of....., in each year, or oftener if necessary, shall make, yield, and render, each to the other, a true, just, and perfect inventory and ac-

count, of all the profits and increase by them, or either of them, made, and of all loss by them, or either of them, sustained, and also of all payments, receipts, disbursements, and of all other things by them made, received, disbursed, acted, or suffered, in their said business; and the said account being so made, they shall and will clear and adjust, each to the other, at the time, their just share of the profits so made as aforesaid; that during the continuance of the said co-partnership, neither of them shall or will indorse any note, or otherwise become security for any person or persons whomsoever, without the consent of the other said co-partner; that at the end of said term, or other sooner determination of their co-partnership, the said co-partners, each to the other, shall and will make a true, just, and final account of all things relating to their said business, and in all things truly adjust the same; and that all and every stock and stocks, as well as the gains and increase thereof, which shall appear to be remaining, either in money, goods, wares, fixtures, debts, or otherwise, shall be divided between them, share and share alike.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

.....(Seal.)  
.....(Seal.)

## SPAULDING'S TABLE FOR MEASUREMENT OF LOGS.

Section 548.—LEGAL STANDARD OF LOG MEASUREMENT. The State adopted the table known as Spaulding's Table for the Measurement of Logs, as the legal standard of measurement in California. The following table, known as Spaulding's Table for the Measurement of Logs, is the standard and table for the measurement of logs throughout the State. For the measurement of logs of any greater length than indicated in the table, the computation shall be made in accordance with table. All logs



shall be measured at the small end and inside the bark, and the contents computed according to table. Allowance shall be made for rot, shake, or other defect in logs measured by this scale, so as to make the survey express the actual quantity of merchantable lumber in each log.

The Spaulding Table for the Measurement of Logs is as follows:

Length in feet.	Diam. 10	Diam. 11	Diam. 12	Diam. 13	Diam. 14	Diam. 15	Diam. 16	Diam. 17	Diam. 18	Diam. 19	Diam. 20
12 ....	38	47	58	71	86	103	121	141	162	184	207
13 ....	41	51	62	76	93	111	131	152	175	199	224
14 ....	44	55	67	82	100	120	141	164	189	214	241
15 ....	47	59	72	88	107	128	151	176	202	230	258
16 ....	50	63	77	94	114	137	161	188	216	245	276
17 ....	53	67	82	100	121	145	171	199	229	260	293
18 ....	57	70	87	106	129	154	181	211	243	276	310
19 ....	60	74	91	112	136	163	191	223	256	291	327
20 ....	63	78	96	118	143	171	201	235	270	306	345
21 ....	66	82	101	124	150	180	211	246	283	322	362
22 ....	69	86	106	130	157	188	221	258	297	337	379
23 ....	72	90	111	136	164	197	231	270	310	352	396
24 ....	76	94	116	142	172	206	242	282	324	368	414

Length in feet.	Diam. 21	Diam. 22	Diam. 23	Diam. 24	Diam. 25	Diam. 26	Diam. 27	Diam. 28	Diam. 29	Diam. 30	Diam. 31
12 ....	231	256	282	309	337	366	396	427	459	492	526
13 ....	250	277	305	334	365	396	429	462	497	533	569
14 ....	269	298	329	360	393	427	462	498	535	574	613
15 ....	288	320	352	387	421	457	495	533	573	615	657
16 ....	308	341	376	412	449	488	528	569	612	656	701
17 ....	327	362	399	437	477	518	561	604	650	697	745
18 ....	346	384	423	463	505	549	594	640	688	738	789
19 ....	365	405	446	489	533	579	627	676	726	779	832
20 ....	385	426	470	515	561	610	660	711	765	820	876
21 ....	404	448	493	540	589	640	693	747	803	861	920
22 ....	423	469	517	566	617	671	726	782	841	902	964
23 ....	442	490	540	591	645	701	759	818	879	943	1008
24 ....	462	512	564	618	674	732	792	854	918	984	1052

Length in feet.	Diam. 32	Diam. 33	Diam. 34	Diam. 35	Diam. 36	Diam. 37	Diam. 38	Diam. 39	Diam. 40	Diam. 41	Diam. 42
12 ....	561	597	634	673	713	755	798	843	889	936	984
13 ....	607	646	686	729	772	817	864	913	963	1014	1066
14 ....	654	696	739	785	831	880	931	983	1037	1092	1148
15 ....	701	746	792	841	891	943	997	1053	1111	1170	1230
16 ....	748	796	845	897	950	1006	1064	1124	1185	1248	1312
17 ....	794	845	898	953	1010	1069	1130	1194	1259	1326	1394
18 ....	841	895	951	1009	1069	1132	1197	1264	1333	1404	1476
19 ....	888	945	1003	1065	1128	1195	1263	1334	1407	1482	1558
20 ....	935	995	1056	1121	1188	1258	1330	1405	1481	1560	1640
21 ....	981	1044	1109	1177	1247	1321	1397	1475	1555	1638	1722
22 ....	1028	1094	1162	1233	1307	1384	1463	1545	1629	1716	1804
23 ....	1075	1144	1215	1289	1366	1447	1529	1615	1703	1794	1886
24 ....	1122	1194	1268	1346	1426	1510	1596	1686	1778	1872	1968

Length in feet.	Diam. 43	Diam. 44	Diam. 45	Diam. 46	Diam. 47	Diam. 48	Diam. 49	Diam. 50	Diam. 51	Diam. 52	Diam. 53
12 ....	1033	1086	1134	1186	1239	1293	1348	1404	1461	1519	1578
13 ....	1119	1176	1228	1284	1342	1400	1460	1521	1582	1645	1709
14 ....	1205	1267	1323	1383	1445	1508	1572	1638	1704	1772	1841
15 ....	1291	1357	1417	1482	1548	1616	1685	1755	1826	1898	1972
16 ....	1377	1448	1512	1581	1652	1724	1797	1872	1948	2025	2104
17 ....	1463	1538	1606	1680	1755	1831	1909	1989	2069	2151	2235
18 ....	1549	1629	1701	1779	1858	1939	2022	2106	2191	2278	2367
19 ....	1635	1719	1795	1877	1961	2047	2134	2223	2313	2405	2498
20 ....	1721	1810	1890	1976	2065	2155	2246	2340	2435	2531	2630
21 ....	1807	1900	1984	2075	2168	2262	2358	2457	2556	2657	2761
22 ....	1893	1991	2079	2174	2271	2370	2470	2574	2678	2784	2893
23 ....	1979	2081	2173	2273	2374	2478	2582	2691	2800	2911	3024
24 ....	2066	2172	2268	2372	2478	2586	2696	2808	2922	3038	3156

Length in feet.	Diam. 54	Diam. 55	Diam. 56	Diam. 57	Diam. 58	Diam. 59	Diam. 60	Diam. 61	Diam. 62	Diam. 63	Diam. 64
12 ....	1638	1700	1763	1827	1893	1960	2028	2098	2169	2241	2315
13 ....	1774	1841	1909	1979	2050	2123	2197	2272	2349	2427	2507
14 ....	1911	1983	2056	2131	2208	2286	2366	2447	2530	2614	2700
15 ....	2047	2125	2203	2283	2366	2450	2535	2622	2711	2801	2893
16 ....	2184	2266	2350	2436	2524	2613	2704	2797	2892	2988	3086
17 ....	2320	2408	2497	2588	2681	2776	2873	2972	3072	3174	3279
18 ....	2457	2550	2644	2740	2839	2940	3042	3147	3253	3361	3472
19 ....	2593	2691	2791	2892	2997	3103	3211	3321	3434	3548	3665
20 ....	2730	2833	2938	3045	3155	3266	3380	3496	3615	3735	3858
21 ....	2866	2974	3085	3197	3312	3429	3549	3671	3795	3921	4051
22 ....	3003	3116	3232	3349	3470	3592	3718	3846	3976	4108	4244
23 ....	3139	3258	3379	3501	3628	3756	3887	4021	4157	4295	4437
24 ....	3276	3400	3526	3654	3786	3920	4056	4196	4338	4482	4630

Length in feet.	Diam. 65	Diam. 66	Diam. 67	Diam. 68	Diam. 69	Diam. 70	Diam. 71	Diam. 72	Diam. 73	Diam. 74	Diam. 75
12 ....	2390	2467	2545	2625	2706	2789	2874	2960	3047	3135	3224
13 ....	2589	2672	2757	2843	2931	3021	3113	3206	3301	3396	3492
14 ....	2789	2878	2969	3062	3157	3253	3353	3453	3555	3657	3761
15 ....	2987	3083	3181	3281	3382	3486	3592	3700	3809	3919	4030
16 ....	3186	3289	3393	3500	3608	3718	3832	3946	4062	4180	4298
17 ....	3385	3494	3605	3718	3833	3951	4071	4193	4316	4441	4567
18 ....	3585	3700	3817	3937	4059	4183	4311	4440	4570	4702	4836
19 ....	3784	3906	4029	4156	4284	4415	4550	4686	4824	4964	5104
20 ....	3983	4111	4241	4375	4510	4648	4790	4933	5078	5225	5372
21 ....	4182	4316	4453	4593	4735	4880	5029	5180	....	....	....
22 ....	4381	4522	4665	4812	4961	5113	5269	5426	....	....	....
23 ....	4580	4728	4877	5031	5186	5345	5508	5673	....	....	....
24 ....	4780	4934	5090	5250	5412	5578	5748	5920	....	....	....

Length in feet.	Diam. 76	Diam. 77	Diam. 78	Diam. 79	Diam. 80	Diam. 81	Diam. 82	Diam. 83	Diam. 84	Diam. 85	Diam. 86
12 ....	3314	3405	3497	3590	3684	3779	3874	3970	4067	4165	4264
13 ....	3590	3688	3788	3889	3991	4094	4196	4301	4406	4512	4619
14 ....	3866	3972	4080	4188	4298	4408	4519	4631	4745	4859	4974
15 ....	4142	4256	4371	4487	4605	4723	4842	4962	5084	5206	5330
16 ....	4418	4540	4663	4786	4912	5038	5165	5293	5423	5553	5685
17 ....	4694	4823	4954	5085	5219	5353	5488	5624	5762	5900	6040
18 ....	4970	5107	5245	5385	5526	5668	5811	5955	6101	6247	6396
19 ....	5246	5391	5537	5684	5833	5983	6133	6282	6440	6594	6751
20 ....	5522	5675	5829	5983	6140	6298	6456	6616	6778	6941	7106

Length in feet.	Diam. 87	Diam. 88	Diam. 89	Diam. 90	Diam. 91	Diam. 92	Diam. 93	Diam. 94	Diam. 95	Diam. 96
12 .....	4364	4465	4566	4668	4771	4875	4980	5085	5192	5300
13 .....	4727	4837	4946	5057	5168	5281	5395	5508	5624	5741
14 .....	5091	5209	5327	5446	5566	5687	5810	5932	6057	6183
15 .....	5455	5581	5707	5835	5964	6094	6225	6356	6490	6625
16 .....	5818	5953	6088	6224	6361	6500	6640	6780	6922	7066
17 .....	6182	6325	6468	6613	6759	6906	7055	7203	7355	7508
18 .....	6546	6697	6849	7002	7156	7312	7470	7627	7788	7950
19 .....	6909	7069	7229	7391	7554	7791	7885	8051	8220	8391
20 .....	7273	7441	7610	7780	7951	8125	8300	8475	8653	8833

Section 549.—EXPLANATION OF TABLE.—The length of any log in feet will be found in the left-hand column of the table, and the diameter at the top of the page.

To find the number of feet of square-edged boards which a log will produce when sawed: Take the length

of feet in left-hand column of the table, and its diameter in inches at the top of the page; trace the two columns of figures until they meet, and you have the required amount.

(A log which is 18 feet long and 21 inches in diameter gives at the right of the length, and directly under the diameter, 346 feet; and one 23 feet long and 18 inches in diameter, gives 310 feet.)

Logs longer than are given in this table can be easily measured by doubling any given length; for example, to find the number of feet, board measure, contained in a log 28 feet long by 19 inches in diameter, double the amount contained in a log 14 feet long, 19 inches in diameter, and you have the answer—428 feet. For a log 42 feet long, 19 inches diameter, multiply the amount contained in the table in a log 14 feet long by 3, and you have the amount; and so on to any length or size.

Each size log has been scaled so as to make all that can be practically sawed out of it, if economically sawed, each log to be measured at the top or small end, inside of the bark, and, if not round, to be measured two ways, at right angles, and the difference taken for the diameter. Where there are any known defects the amount deducted should be agreed upon by the buyer and seller, and no fraction of an inch to be taken into the measurement.

## SEARCHERS OF RECORDS.

Section 550.—ABSTRACTS OF TITLE.—An abstract of title is a condensed history of the title to the land, consisting of a synopsis or summary of the material portions of all the conveyances of record, of whatever kind or nature, which in any manner affect the land, or any estate or interest in the land, together with a statement of all liens, charges, or liabilities to which the property may be subject, and of which it is in any way material for purchasers to be apprised. The object of the abstract is to enable the purchaser, or his attorney, to pass more



readily on the sufficiency of the title. Therefore, a complete abstract should show whatever appears of record which concerns the sources of the title and its present condition. The descent and line of the title should be clearly traced out, and all encumbrances and liens of every sort, and all adverse claims, and the material parts of all patents, deeds, wills, judicial proceedings, and other records or documents which touch the title.

Section 551.—SEARCHERS OF RECORD.—From the necessity of having an abstract of record of the title to land, and the volume and extent of the records themselves, has grown that class of expert searchers known as abstracters, or searchers of record, whose business it is to prepare in a condensed and convenient form the data from which it can be determined whether the title is good or bad, or free from encumbrance, and if encumbered at all, the character of the encumbrance. So important is their work, and so much depends upon the accuracy and fidelity of the abstracts they furnish, that it is to be expected by those who engage in the business of furnishing abstracts that any errors or omissions resulting in damages will incur a liability on their part to their patrons.

Section 552.—LIABILITY OF SEARCHERS OF RECORD.—One who holds himself out to the world as an examiner of titles, and who undertakes to furnish correct abstracts of title, is bound to exercise skill and care in making the examination, and in preparing the abstract, and is liable in damages for a failure to exercise that duty. Persons engaged in the business of making abstracts of title occupy a relation of confidence towards those employing them, which is second only in the sacredness of its nature to the relation which a lawyer sustains to his client. Searchers of record consult the evidences of ownership, and become familiar with the chains and histories of title. They handle private title papers, and become aware of whatever weaknesses or defects may exist in the legal

proceedings through which the ownership of real property is secured. And the courts have said, that they should be held to a strict responsibility in the exercise of the trust and confidence which are necessarily reposed in them.

Section 553.—TO WHOM LIABLE.—The liability of a searcher of records for want of skill or ordinary care and diligence is only to the party employing him. An action for damages for errors or omissions in an abstract of title cannot be sustained by a third person acting upon the faith of the correctness of the abstract, as there is no contract between him and the abstracter. The abstracter knows that his records are to be seen, and titles to be made in reliance upon them, but he is not bound to know that his certificate is for the use or reliance of any but the person who receives it, nor can it be assumed that he gives it for any other use. He contracts with the person who requests and pays for it, to give a certificate which shall state the facts; but he enters into no relation of contract or duty in respect to it with any other person; and, if another relies upon it to his injury, he cannot recover damages against the abstracter, because the latter assumed no duty for his protection. A searcher of records is liable for his negligence only to the person who requests and pays for the certificate of search. He is not liable to the grantee of the person who employed him, as there was no contract between them. A searcher of records, employed by the owner to prepare an abstract of title for the purpose of procuring a loan, is not liable in damages to the lender, for a loss caused by mistake in the abstract, there being no contract between him and the lender. It is a general rule that a searcher of records is liable for damages, because of his negligence or mistake, only to his immediate employer, and not to the latter's assigns, vendees, or devisees, nor to any third person between whom and himself there is no contract relation.

Section 554.—**LIABILITY FOR MISTAKE.**—A searcher of records, giving a certificate of title, is liable to his employer for any mistake arising from want of due care or diligence, or from ignorance of his business.

Section 555.—**LIABILITY FOR OMITTING ENCUMBRANCE.** If a searcher of records undertakes to furnish a purchaser of land with a full abstract of title, he is liable in damages for his negligence in carelessly omitting from the abstract any mention of a particular encumbrance, by which the purchaser is put to additional expense to perfect his title.

Section 556.—**MARGINAL REFERENCE IN RECORD BOOK.** When a searcher of records undertakes to make a complete abstract of title, he takes the obligation upon himself to make a full and true search and examination of all records relating to the land, and to note in the abstract accurately every transfer, conveyance, or other instrument of record in any way affecting the title. He is not required to give any opinion as to the legal effect of any of the instruments, and just how full a description of them he shall give is, to a certain extent, a matter for himself to decide; but in so far as he assumes to describe the recorded instruments, he is required to make **his descriptions** accurate. The record, and not a marginal reference to it by the Recorder, nor an index reference to the instrument, is what determines the character and legal effect of the instrument; and the duty of the searcher of records is not fulfilled by merely assuming the accuracy of a marginal reference, without examining the instrument itself. In failing to examine the record of the instrument itself, the searcher is guilty of negligence. So, in a case where a partial release of a mortgage was recorded, and a register of deeds, in his reference to it on the margin of the record of the mortgage erroneously made the entry "Satisfied" (with a reference to the book and page where the release was recorded), when in fact it should have been "Partially satisfied," and the

searcher; in making up the abstract, relied upon this marginal entry entirely, supposing it to be correct, and did not examine the contents of the instrument of release itself, and the party procuring the abstract was afterwards compelled to pay the mortgage; it was held by the court that the searcher was guilty of negligence, and was liable for whatever the party had been compelled to pay.

Section 557.—OMITTING JUDGMENT AND SALE.—If a searcher of records, employed by a purchaser to make an abstract, omits to note the fact of a judgment and sale of the land for taxes, of which the purchaser is ignorant until the time for redemption has expired, whereby he is caused to pay out money to remove the cloud from his title, the abstracter is liable in damages to the purchaser for the sum paid out by him.

Section 558.—INCORRECT REPORT OF QUANTITY OF LAND CONVEYED.—If a searcher of records incorrectly reports in the abstract the quantity of land previously conveyed, he is liable in damages to the person who employed him and relied upon the information in purchasing the land.

Section 559.—MEASURE OF DAMAGES.—The damages suffered must be actual damages. The law will not compel a searcher of records, even though he has been guilty of inexcusable negligence or ignorance, in preparing the abstract, to pay any damages by way of punishment. The person who employed him is entitled to the actual money loss, by reason of the negligent act or omission, and that is all.

Section 560.—WHEN SUIT FOR DAMAGES MUST BE COMMENCED.—In California, a suit against a searcher of records for damages must be commenced within two years after the delivery of the defective abstract, or it is barred by the statute of limitations.

Section 561.—SALE OF GOOD WILL OF ABSTRACTING BUSINESS.—Section 1674 of the Civil Code of California,



providing that one who sells the good will of a "business" may agree with the buyer to refrain from carrying on a similar "business," is broad enough to include, and does include, the business of abstracting.

## NOTARY PUBLIC.

Section 562.—DUTIES OF NOTARY.—The duties of a Notary Public are prescribed by law, and are varied and important. In business affairs, the taking of acknowledgments to deeds, mortgages, leases, and other instruments, constitutes the greater and most important part of a Notary's work. His duties, however, extend to a number of other matters. He is required, when requested, to demand acceptance and payment of foreign, domestic, and inland bills of exchange, or promissory notes, and protest the same for non-acceptance and non-payment; he may take acknowledgment or proof of powers of attorney, mortgages, deeds, grants, transfers, and other instruments of writing executed by any person; he may take depositions and affidavits, and administer oaths, to be used before any court, judge, officer, or board in this State.

Section 563.—NOTARY'S RECORD.—He is required to keep a record of all official acts done by him; to keep a record of the parties to every instrument acknowledged or proved before him, with the date and character of the instrument; and when requested, and upon payment of his fees, he must make and give a certified copy of any record in his office.

Section 564.—NUMBER OF NOTARIES.—The governor may appoint and commission such number of notaries public for the several counties and cities and counties of this State as he shall deem necessary for the public convenience, except that in cities and counties of the

second class the number shall not exceed one hundred and thirty.

Act of the Legislature, approved April 11, 1917;  
in effect July 27, 1917.

Section 565.—BOND OF NOTARY.—Every Notary in California must give an official bond in the sum of \$5000, which must be approved by the Judge of the Superior Court, of his county, and recorded as other official bonds of county officers.

Section 566.—LIABILITY OF NOTARY.—The law provides that for the official misconduct or neglect of a Notary Public, he and the sureties on his official bond are liable to the parties injured for all the damages sustained.

Political Code, Section 801.

Section 567.—WHAT ACTS COVERED BY OFFICIAL BOND. The condition of a bond of a Notary Public being, that he will "well and truly perform and discharge the duties of a Notary Public according to law," this embraces every act which he is authorized or required by law to do in virtue of his office. By accepting the office, a Notary contracts with those who employ him that he will perform the duties of the office with integrity, diligence, and skill. He gives his bond to indemnify those who shall suffer by the unfaithful or unskillful performance of his duty. Before a Notary and his bondsmen can be held liable for damages, it is necessary to determine whether the act done or not done was or not authorized by law, was or not incumbent upon him, was or not required of him, whether he was directed to do it, whether he has failed to discharge the duty, and whether injury has been sustained. Where a Notary does a thing which the law does not authorize him to do, although he does it in his capacity of Notary Public, his bondsmen are not responsible for his act. Notaries and their sureties are

liable only to the persons who have employed the Notary, and are only liable to those who suffer injury on account of the Notary's failure to perform the duty incumbent upon him or required by law.

Section 568.—LIABILITY OF SURETIES ON OFFICIAL BOND.—The surety on a Notary's official bond is only bound for such acts of his as the law authorizes or requires him to do in his official capacity. By signing the bond, the surety tells all who may need the services of a Notary: "You can go with security to this Notary; I assure you that he is a competent officer; that he will well and faithfully discharge and perform all the duties imposed upon him by law; and if he fails in doing so, I will be responsible to you for losses sustained." If, therefore, a person calls on a Notary for the performance of a duty incumbent upon him, and the Notary fails or neglects his duty, and injury is suffered, the surety is liable to the party injured. A surety cannot be held liable because the Notary has done acts which the law did not authorize or compel him to perform, and which were therefore not incumbent upon him. The sureties upon the official bond of a Notary Public are only liable for damages occasioned by his negligence or misconduct in the line of his official duty.

Section 569.—PREMATURE PROTEST OF PROMISSORY NOTE.—In case of a promissory note falling due, according to its face, upon Sunday, a Notary cannot present it for payment, nor make protest, on the preceding Saturday. The following Monday is the proper date for presentment and protest, unless that is also a legal holiday, when the next would be the proper day. Sunday, not being a legal day for exacting payment, cannot be computed, except when it is an intermediate day. To do so would make another contract for the parties, and by requiring payment on Saturday would compel the obligation to be met before the contract time for its performance had arrived. The act of a Notary in wrongfully

protesting a promissory note before it is due gives a right of action against him for damages, and against his bondsmen, in favor of the injured party. For the Notary is presumed to know the wrongful character of the act, and that, in the trading community, the protest of a note is likely to impair the maker's credit. If lawfully protested, the maker cannot complain; but he can complain, and justly so, if presentment and protest are made prematurely, before the law authorizes the acts.

Section 570.—FALSE CERTIFICATE TO ACKNOWLEDGMENT.—The sureties on the official bond of a Notary are liable for the full amount of a mortgage purchased in reliance on the genuineness of the Notary's certificate of acknowledgment, where the certificate is in fact false and the mortgage a forgery, and where the purported maker was solvent and able to pay the mortgage debt. When a Notary certifies that the mortgagor duly acknowledged the execution of a mortgage, which in fact is a forgery, the measure of damages, in a suit against the Notary or his sureties, brought by one who has parted with value on the face of such certificate, is the amount which would be the value of the mortgage if genuine. The value of the mortgage depends not merely upon the value of the mortgaged property, but also on the solvency of the mortgagor. When it appears, in such a suit for damages, that the plaintiff, had the mortgage been genuine, would have been able to collect the whole amount named therein, he is entitled to recover that amount from the Notary or his sureties, without regard to the value of the mortgaged property or the interest of the mortgagor in the property. If it should appear that the mortgage, if valid, could not be collected and would not be worth anything, then the plaintiff would not be entitled to damages, because it would not be shown that he had suffered any injury. But whatever value was shown, if the mortgage were valid, could be recovered against the Notary and his sureties.



Section 571.—NOTARY CANNOT AMEND CERTIFICATE.—When an acknowledgment has been made, before a Notary, the party making it has done all that the law requires to make the instrument his act and deed. The embodiment of the fact of acknowledgment, in the form of the certificate prescribed by law, devolves upon the Notary, and not upon the party making it. And if the Notary blunders in certifying to an acknowledgment duly made, or if he makes a defective or false certificate, he cannot alter or amend it; because, after taking the acknowledgment and delivering the return, his functions cease, and he is discharged from all further authority. The Superior Court, and not the Notary, has power to correct a defective certificate of acknowledgment.

Section 572.—NOTARY'S KNOWLEDGE OF PARTY ACKNOWLEDGING INSTRUMENT.—A Notary is bound to know the person acknowledging an instrument before him, or, if he is not personally acquainted with him, he is bound to have the person's identity established by competent proof. If he knows the person, he may so state in his certificate of acknowledgment; if he does not know him personally, he may state in his certificate of acknowledgment the proof presented to establish his identity. When a Notary Public, in taking and certifying an acknowledgment to a mortgage, neglected to state in his certificate that the party acknowledging the instrument was known to him, or was identified by the testimony of a witness examined by him for that purpose, the Supreme Court of California held that the Notary was guilty of gross negligence, and that he and his bondsmen were responsible to the party injured for the damages resulting from his negligence. The Court said: "Plaintiff loaned to one Dupuy a sum of money, taking as security a mortgage on a lot in San Francisco. The mortgage was acknowledged by Dupuy before defendant Finlay, who was a Notary Public. The mortgage used was an ordinary printed form, having a certificate of acknowledg-

ment in blank, in which was inserted, in the hand of one Sanders, who acted in the transaction as attorney for both mortgagor and mortgagee, the name of the mortgagor and the date of the acknowledgment. To this certificate the Notary affixed his signature and seal, but omitted to state either that the party acknowledging was known to him, or was identified by the testimony of a witness examined for that purpose. In consequence of that omission, the record of the mortgage was held not to impart notice to subsequent encumbrancers. Plaintiff's lien was postponed in favor of a later mortgage, which exhausted the entire property, and Dupuy being insolvent, the debt was lost. Plaintiff now seeks to recover, on the bond of the Notary, the damages suffered by the negligent and unskillful performance of an official act. The purpose of a certificate of acknowledgment is to entitle the deed to be recorded, and to be admitted in evidence without further proof. The certificate furnished was utterly worthless for either purpose. This neglect is not excused by the fact that the certificate had been partially filled by the attorney for the grantee. The certificate, upon its face, is unfinished; the date and the name of the grantor had been inserted, leaving it for the Notary to insert his knowledge or the evidence received of the identity of the party making the acknowledgment. If the Notary read the certificate before signing it, this omission must have been known to him; if he did not, he is equally guilty of negligence, for an officer who affixes his official signature and seal to a document, without examining it to find whether the facts certified are true, can scarcely be said to faithfully perform his duty according to law." (Decided by the Supreme Court of California in the case of *Fogarty vs. Finlay*, which decision is printed in Volume 10 of the California Reports, page 239.)

Section 573.—PARTY INTRODUCED TO NOTARY.—The acknowledgment of an instrument must not be taken,

unless the Notary taking it knows, or has satisfactory evidence, on the oath or affirmation of a creditable witness, that the person making such acknowledgment is the individual who is described in and who executed the instrument. A Notary has no right, in disregard of this plain provision of the law, to certify that he knows a person whom he does not know, on the mere introduction of a third party; and if he does so, and a loss results, he renders himself and his sureties liable to make good the loss.

Civil Code, Section 1185.

Section 574.—**MISAPPROPRIATION OF MONEYS.**—As it is no part of the official duty of a Notary to receive money from or for anybody, his sureties are not liable for money fraudulently obtained and retained by him. So, if a Notary Public, who is also a real estate agent and engaged in negotiating loans, by false representations procures money upon forged mortgages, and then retains the money, his sureties are not liable. The sureties upon an official bond are not sureties for the general good behavior of the officer. They are responsible only for his official misconduct or neglect. As stated, it is no part of the duty of a Notary Public to receive money from or for anybody. It is misconduct, but not official misconduct, for a Notary to fraudulently obtain money in the manner stated. He does not receive any money in his official capacity. The sureties on his official bond are not liable for such misconduct, because it is only against his official misconduct that the sureties consent to indemnify persons injured by him.

Section 575.—**TAKING OATH OVER TELEPHONE.**—The general rule is that a Notary Public cannot act as such outside of the county for which he is appointed. A Notary of one county of California is not authorized to administer an oath outside of the county for which he is appointed.

A party taking an oath before a Notary should appear in person; and it has been decided that an affidavit on attachment sworn to over the telephone before a Notary Public for Kern County, the affiant at the time being in the County of Los Angeles, was void, and an attachment issued thereon must be released.

(Decided by the California Court of Appeals, in the case of Fairbanks, Morse & Co. vs. Getchell, which decision is printed in Volume X of Appellate Decisions, page 714.)

Section 576.—FEES OF NOTARY.—The fees of Notaries allowed by law are as follows: For drawing and copying every protest for non-payment of a promissory note, or for the non-payment or non-acceptance of a bill of exchange, draft, or check, two dollars; for drawing and serving every notice of non-payment of a promissory note, or of the non-payment or non-acceptance of a bill of exchange, order, draft, or check, one dollar; for recording every protest, one dollar; for drawing an affidavit, deposition, or any paper other than those above mentioned, for each folio, thirty cents; for taking an acknowledgment or proof of a deed or other instrument, to include the seal and the writing of the certificate, for the first two signatures, one dollar each, and for each additional signature, fifty cents; for administering an oath or affirmation, fifty cents; for every certificate, to include writing it, and the seal, one dollar.

Political Code, Section 798.

A. J. BLEDSOE, ATTORNEY-AT-LAW, LOS ANGELES, CAL.—General practice in State and Federal courts. Legal advice at office, and trial of cases in court. See title page of this book for office address of A. J. Bledsoe.



## PART II.

### BILLS OF LADING.

Section 577.—NEW LAW OF 1919.—The Legislature of 1919 passed a new law governing bills of lading issued by common carriers in California. It provides as follows:

Section 578.—ESSENTIAL TERMS OF BILL OF LADING.—Every bill must embody within its written or printed terms—

- (a) The date of its issue;
- (b) The name of the person from whom the goods have been received;
- (c) The place where the goods have been received;
- (d) The place to which the goods are to be transported;
- (e) A statement whether the goods received will be delivered to a specified person, or to the order of a specified person;
- (f) A description of the goods or of the packages containing them which may, however, be in such general terms as are referred to in this code; and
- (g) The signature of the carrier.

A negotiable bill shall have the words "order of" printed thereon immediately before the name of the person upon whose order the goods received are deliverable.

A carrier shall be liable to any person injured thereby for the damage caused by the omission from a negotiable bill of any of the provisions required in this section.

Section 579.—WHAT TERMS MAY BE INSERTED.—A carrier may insert in a bill, issued by him, any other

terms and conditions, provided that such terms and conditions shall not—

(a) Be contrary to law or public policy, or

(b) In any wise impair his obligation to exercise at least that degree of care in the transportation and safe-keeping of the goods entrusted to him which a reasonably careful man would exercise in regard to similar goods of his own.

Section 580.—NONNEGOTIABLE OR STRAIGHT BILL.—A bill in which it is stated that the goods are consigned or destined to a specified person, is a nonnegotiable or straight bill.

Section 581.—NEGOTIABLE OR ORDER BILL.—A bill in which it is stated that the goods are consigned or destined to the order of any person named in such bill, is a negotiable or order bill.

Any provision in such a bill that it is nonnegotiable shall not affect its negotiability within the meaning of this article.

Section 582.—NEGOTIABLE BILLS MUST NOT BE ISSUED IN SETS.—Negotiable bills issued in this state for the transportation of goods to any place in the United States on the continent of North America, except Alaska, shall not be issued in parts or sets.

If so issued the carrier issuing them shall be liable for failure to deliver the goods described therein to any one who purchases a part for value in good faith, even though the purchase be after the delivery of the goods by the carrier to a holder of one of the other parts.

Section 583.—DUPLICATE NEGOTIABLE BILLS MUST BE SO MARKED.—When more than one negotiable bill is issued in this state for the same goods to be transported to any place in the United States on the continent of North America, except Alaska, the word “duplicate” or some

other word or words indicating that the document is not an original bill shall be placed plainly upon the face of every such bill except the one first issued. A carrier shall be liable for the damage caused by his failure so to do to any one who has purchased the bill for value in good faith as an original, even though the purchase be after the delivery of the goods by the carrier to the holder of the original bill.

Section 584.—NONNEGOTIABLE BILLS MUST BE MARKED. A nonnegotiable bill shall have placed plainly upon its face by the carrier issuing it “nonnegotiable” or “not negotiable.”

This section shall not apply, however, to memoranda or acknowledgments of an informal character.

Section 585.—INSERTION OF NAME OF PERSON TO BE NOTIFIED.—The insertion in a negotiable bill of the name of a person to be notified of the arrival of the goods shall not limit the negotiability of the bill, or constitute notice to a purchaser thereof of any rights or equities of such person in the goods.

Section 586.—ACCEPTANCE OF BILL INDICATES ASSENT TO TERMS.—Except as otherwise provided in this article where a consignor receives a bill and makes no objection to its terms or conditions at the time he receives it, neither the consignor nor any person who accepts delivery of the goods, nor any person who seeks to enforce any provision of the bill, shall be allowed to deny that he is bound by such terms and conditions, so far as they are not contrary to law or public policy.

Section 587.—OBLIGATION OF CARRIER TO DELIVER.—A carrier in the absence of some lawful excuse, is bound to deliver goods upon a demand made either by the consignee named in the bill for the goods, or if the bill is negotiable, by the holder thereof, if such demand is accompanied by—

(a) An offer in good faith to satisfy the carrier's lawful lien upon the goods;

(b) An offer in good faith to surrender, properly indorsed, the bill which was issued for the goods if the bill is negotiable; and

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the carrier.

In case the carrier refuses or fails to deliver the goods in compliance with a demand by the consignee or holder so accompanied, the burden shall be upon the carrier to establish the existence of a lawful excuse for such refusal or failure.

Section 588.—JUSTIFICATION OF CARRIER IN DELIVERING.—A carrier is justified, subject to the provisions of the three following sections, in delivering goods to one who is—

(a) A person lawfully entitled to the possession of the goods, or

(b) The consignee named in a nonnegotiable bill for the goods, or

(c) A person in possession of a negotiable bill for the goods by the terms of which the goods are deliverable to his order, or which has been indorsed to him or in blank by the consignee or by the mediate or immediate indorsee of the consignee.

Section 589.—CARRIER'S LIABILITY FOR MISDELIVERY.—Where a carrier delivers goods to one who is not lawfully entitled to the possession of them, the carrier shall be liable to anyone having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section; and though he delivered the goods as authorized by either of said subdivisions, he shall be so liable if prior to such delivery he—



(a) Had been requested, by or on behalf of a person having a right of property or possession in the goods, not to make such delivery; or

(b) Had information at the time of the delivery that it was to a person not lawfully entitled to the possession of the goods.

A request or information to be effective within the meaning of this section must be given to an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a request or information, and must be given in time to enable the officer or agent to whom it is given, acting with reasonable diligence, to stop delivery of the goods.

Section 590.—NEGOTIABLE BILLS MUST BE CANCELED UPON DELIVERY OF GOODS.—Except where the goods have been sold to satisfy a lien, and except when compelled by legal process, if a carrier delivers goods for which a negotiable bill had been issued, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the bill, such carrier shall be liable for failure to deliver the goods to anyone who for value and in good faith purchases such bill, whether such purchaser acquired title to the bill before or after the delivery of the goods by the carrier, and notwithstanding delivery was made to the person entitled thereto.

Section 591.—WHEN PART OF GOODS ARE DELIVERED. Except as above stated, if a carrier delivers part of the goods for which a negotiable bill had been issued and fails either—

(a) To take up and cancel the bill, or

(b) To place plainly upon it a statement that a portion of the goods has been delivered, with a description, which may be in general terms, either of the goods or packages that have been so delivered or of the goods or packages which still remain in the carrier's possession,

he shall be liable for failure to deliver all the goods specified in the bill, to anyone who for value and in good faith purchases it, whether such purchaser acquired title to it before or after the delivery of any portion of the goods by the carrier, and notwithstanding such delivery was made to the person entitled thereto.

Section 592.—**ALTERED BILLS.**—Any alteration, addition or erasure in a bill after its issue without authority from the carrier issuing the same either in writing or noted on the bill shall be void, whatever be the nature and purpose of the change, and the bill shall be enforceable according to its original tenor.

Section 593.—**LOST OR DESTROYED BILLS.**—Where a negotiable bill has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient surety to be approved by the court to protect the carrier or any person injured by such delivery from any liability or loss, incurred by reason of the original bill remaining outstanding. The court may also in its discretion order the payment of the carrier's reasonable costs and counsel fees.

The delivery of the goods under an order of the court as provided in this section, shall not relieve the carrier from liability to a person to whom the negotiable bill has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods.

Section 594.—**EFFECT OF DUPLICATE BILLS.**—A bill upon the face of which the word "duplicate" or some other word or words indicating that the document is not an original bill is placed plainly shall impose upon the carrier issuing the same the liability of one who represents and warrants that such bill is an accurate copy of an original bill properly issued, but no other liability.

Section 595.—CARRIER CANNOT SET UP TITLE IN HIMSELF.—No title to goods or right to their possession, asserted by a carrier for his own benefit, shall excuse him from liability for refusing to deliver the goods according to the terms of a bill issued for them, unless such title or right is derived directly or indirectly from a transfer made by the consignor or consignee after the shipment, or from the carrier's lien.

Section 596.—INTERPLEADER OF ADVERSE CLAIMANTS. If more than one person claims the title or possession of goods, the carrier may require all known claimants to interplead, either as a defense to an action brought against him for nondelivery of the goods, or as an original suit, whichever is appropriate.

Section 597.—REASONABLE TIME TO ASCERTAIN VALIDITY OF CLAIM.—If someone other than the consignee or person in possession of the bill, has a claim to the title or possession of the goods, and the carrier has information of such claim, the carrier shall be excused from liability for refusing to deliver the goods either to the consignee or person in possession of the bill, or to the adverse claimant, until the carrier has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead.

Section 598.—ADVERSE TITLE NO DEFENSE.—Except as provided in preceding sections, no right or title of a third person unless enforced by legal process shall be a defense to an action brought by the consignee of a nonnegotiable bill or by the holder of a negotiable bill against the carrier for failure to deliver the goods on demand.

Section 599.—LIABILITY FOR NONRECEIPT OR MISDESCRIPTION OF GOODS.—If a bill of lading has been issued by a carrier or on his behalf by an agent or employee the

scope of whose actual or apparent authority includes the issuing of bills of lading, the carrier shall be liable to—

- (a) The consignee named in a nonnegotiable bill, or
- (b) The holder of a negotiable bill,

Who has given value in good faith relying upon the description therein of the goods, for damages caused by the nonreceipt by the carrier or a connecting carrier of all or part of the goods or their failure to correspond with the description thereof in the bill at the time of its issue.

If, however, the goods are described in a bill merely by a statement of marks or labels upon them or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind or quantity, or in a certain condition, or it is stated in the bill that packages are said to contain goods of a certain kind or quantity or in a certain condition, or that the contents or condition of the contents of packages are unknown, or words of like purport are contained in the bill, such statements, if true, shall not make liable the carrier issuing the bill, although the goods are not of the kind or quantity or in the condition which the marks or labels upon them indicate, or of the kind or quantity or in the condition they were said to be by the consignor. All carriers must issue to shippers of carload freight from agency stations a clean bill of lading at the request of the shipper and in such cases shall discontinue the practice of noting on bill of lading "Shipper's load and count." Upon request of shipper of carload freight from a non-agency station, the carrier shall send a man to check the loading and shall issue a clean bill of lading, the expense, except transportation of a man to and from point of loading to perform service of checking, to be borne by the shipper.

Section 600.—ATTACHMENT OR LEVY UPON GOODS.—If goods are delivered to a carrier by the owner or by a person whose act in conveying the title to them to a pur-



chaser for value in good faith would bind the owner and a negotiable bill is issued for them, they cannot thereafter, while in the possession of the carrier, be attached by garnishment or otherwise, or be levied upon under an execution, unless the bill be first surrendered to the carrier or its negotiation enjoined. The carrier shall in no such case be compelled to deliver the actual possession of the goods until the bill is surrendered to him or impounded by the court.

Section 601.—CREDITOR'S REMEDIES TO REACH NEGOTIABLE BILLS.—A creditor whose debtor is the owner of a negotiable bill shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such bill, or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process.

Section 602.—BILL MUST STATE CHARGES FOR LIEN CLAIM.—If a negotiable bill is issued the carrier shall have no lien on the goods therein mentioned, except for charges on those goods for freight, storage, demurrage and terminal charges, and expenses necessary for the preservation of the goods or incident to their transportation subsequent to the date of the bill, unless the bill expressly enumerates other charges for which a lien is claimed. In such case there shall also be a lien for the charges enumerated so far as they are allowed by law and the contract between the consignor and the carrier.

Section 603.—EFFECT OF SALE.—After goods have been lawfully sold to satisfy a carrier's lien, or because they have not been claimed, or because they are perishable or hazardous, the carrier shall not thereafter be liable for failure to deliver the goods to the consignee or owner of the goods, or to a holder of the bill given for the goods when they are shipped, even if such bill be negotiable.

Section 604.—NEGOTIATION OF NEGOTIABLE BILLS BY DELIVERY.—A negotiable bill may be negotiated by delivery where, by the terms of the bill, the carrier undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the bill has indorsed it in blank.

Section 605.—INDORSEMENT.—A negotiable bill may be negotiated by the indorsement of the person to whose order the goods are deliverable by the tenor of the bill. Such indorsement may be in blank or to a specified person. If indorsed to a specified person, it may be negotiated again by the indorsement of such person in blank or to another specified person. Subsequent negotiation may be made in like manner.

Section 606.—TRANSFER OF BILLS.—A bill may be transferred by the holder by delivery, accompanied with an agreement, express or implied, to transfer the title to the bill or to the goods represented thereby.

A nonnegotiable bill cannot be negotiated, and the indorsement of such a bill gives the transferee no additional right.

Section 607.—WHO MAY NEGOTIATE BILLS.—A negotiable bill may be negotiated by any person in possession of the same, however such possession may have been acquired if, by the terms of the bill, the carrier undertakes to deliver the goods to the order of such person, or if at the time of negotiation the bill is in such form that it may be negotiated by delivery.

Section 608.—RIGHTS OF PERSON TO WHOM BILL HAS BEEN NEGOTIATED.—A person to whom a negotiable bill has been duly negotiated acquires thereby—

(a) Such title to the goods as the person negotiating the bill to him had or had ability to convey to a purchaser in good faith for value, and also such title to the

goods as the consignee and consignor had or had power to convey to a purchaser in good faith for value, and

(b) The direct obligation of the carrier to hold possession of the goods for him according to the terms of the bill as fully as if the carrier had contracted directly with him.

Section 609.—RIGHTS OF PERSON TO WHOM BILL HAS BEEN TRANSFERRED.—A person to whom a bill has been transferred but not negotiated acquires thereby as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor. If the bill is nonnegotiable, such person also acquires the right to notify the carrier of the transfer to him of such bill, and thereby to become the direct obligee of whatever obligations the carrier owed to the transferor of the bill immediately before the notification.

Prior to the notification of the carrier by the transferor or transferee of a nonnegotiable bill, the title of the transferee to the goods and the right to acquire the obligation of the carrier may be defeated by garnishment or by attachment or execution upon the goods by a creditor of the transferor, or by a notification to the carrier by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

A carrier has not received notification within the meaning of this section unless an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such notification, has been notified; and no notification shall be effective until the officer or agent to whom it is given has had time with the exercise of reasonable diligence to communicate with the agent or agents having actual possession or control of the goods.

Section 610.—TRANSFER OF NEGOTIABLE BILL WITHOUT INDORSEMENT.—Where a negotiable bill is transferred for value by delivery, and the indorsement of the trans-

feror is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the bill, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. This obligation may be specially enforced.

Section 611.—WARRANTIES ON SALE OF BILL.—A person who negotiates or transfers for value a bill by indorsement or delivery, including one who assigns for value a claim secured by a bill, unless a contrary intention appears, warrants —

- (a) That a bill is genuine;
- (b) That he has a legal right to transfer it;
- (c) That he has knowledge of no fact which would impair the validity or worth of the bill; and

(d) That he has a right to transfer the title of the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a bill the goods represented thereby.

In the case of an assignment of a claim secured by a bill, the liability of the assignor shall not exceed the amount of the claim.

Section 612.—INDORSER NOT A GUARANTOR.—The indorsement of a bill shall not make the indorser liable for any failure on the part of the carrier or previous indorsers of the bill to fulfill their respective obligations.

Section 613.—NO WARRANTY IMPLIED FROM ACCEPTING PAYMENT OF DEBT.—A mortgagee or pledgee, or other holder of a bill for security who in good faith demands or receives payment of the debt for which such bill is security, whether from a party to a draft drawn for such debt or from any other person, shall not be deemed by so doing to represent or to warrant the genuineness of such bill or the quantity or quality of the goods therein described.



Section 614.—WHEN NEGOTIATION NOT IMPAIRED BY FRAUD.—The validity of the negotiation of a bill is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the bill was deprived of the possession of the same by fraud, accident, mistake, duress or conversion, if the person to whom the bill was negotiated, or a person to whom the bill was subsequently negotiated, gave value therefor, in good faith, without notice of the breach of duty, or fraud, accident, mistake, duress or conversion.

Section 615.—SUBSEQUENT NEGOTIATION.—Where a person having sold, mortgaged, or pledged goods which are in the carrier's possession and for which a negotiable bill has been issued, or having sold, mortgaged, or pledged the negotiable bill representing such goods, continues in possession of the negotiable bill, the subsequent negotiation thereof by that person under any sale, pledge, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, shall have the same effect as if the first purchaser of the goods or bill had expressly authorized the subsequent negotiation.

Section 616.—FORM OF BILL AS INDICATING RIGHTS OF BUYER AND SELLER.—Where goods are shipped by the consignor in accordance with a contract or order for their purchase, the form in which the bill is taken by the consignor shall indicate the transfer or retention of the property or right to the possession of the goods as follows:

(a) Where by the bill the goods are deliverable to the buyer or to his agent, or to the order of the buyer or of his agent, the consignor thereby transfers the property in the goods to the buyer.

(b) Where by the bill the goods are deliverable to the seller or to his agent, or to the order of the seller or of

his agent, the seller thereby reserves the property in the goods. But if, except for the form of the bill, the property would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

(c) Where by the bill the goods are deliverable to the order of the buyer or of his agent, but possession of the bill is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods, as against the buyer.

(d) Where the seller draws on the buyer for the price and transmits the draft and bill together to the buyer to secure acceptance or payment of the draft, the buyer is bound to return the bill if he does not honor the draft, and if he wrongfully retains the bill he acquires no added right thereby. If, however, the bill provides that the goods are deliverable to the buyer, or to the order of the buyer, or is endorsed in blank or to the buyer by the consignee named therein, one who purchases in good faith, for value, the bill or goods from the buyer, shall obtain the title to the goods, although the draft has not been honored, if such purchaser has received delivery of the bill indorsed by the consignee named therein, or of the goods, without notice of the facts making the transfer wrongful.

Section 617.—DRAFT ON BUYER BY SELLER OF GOODS.—Where the seller of goods draws on the buyer for the price of the goods and transmits the draft and a bill of lading for the goods either directly to the buyer or through a bank or other agency, unless a different intention on the part of the seller appears, the buyer and all other parties interested shall be justified in assuming:

(a) If the draft is by its terms or legal effect payable on demand or presentation or at sight, or not more than three days thereafter (whether such three days be termed

days of grace or not), that the seller intended to require payment of the draft before the buyer should be entitled to receive or retain the bill.

(b) If the draft is by its terms payable on time, extending beyond three days after demand, presentation or sight (whether such three days be termed days of grace or not), that the seller intended to require acceptance, but not payment of the draft before the buyer should be entitled to receive or retain the bill.

The provisions of this section are applicable whether by the terms of the bill the goods are consigned to the seller, or to his order, or to the buyer, or to his order, or to a third person, or to his order.

Section 618.—NEGOTIATION DEFEATS VENDOR'S LIEN. Where a negotiable bill has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such bill has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier who issued such bill of the seller's claim to a lien or right of stoppage in transitu. Nor shall the carrier be obliged to deliver or justified in delivering the goods to an unpaid seller unless such bill is first surrendered for cancellation.

Section 619.—WHEN RIGHTS AND REMEDIES ARE NOT LIMITED.—Nothing in this article shall limit the rights and remedies of a mortgagee or lienholder whose mortgage or lien on goods would be valid, apart from this article, as against one who for value and in good faith purchased from the owner, immediately prior to the time of their delivery to the carrier, the goods which are subject to the mortgage or lien, and obtained possession of them.

Section 620.—ISSUE OF BILL FOR GOODS NOT RECEIVED. Any officer, agent, or servant of a carrier, who with

intent to defraud issues or aids in issuing a bill knowing that all or any part of the goods for which such bill is issued have not been received by such carrier, or by an agent of such carrier or by a connecting carrier, or are not under the carrier's control at the time of issuing such bill, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

Section 621.—ISSUE OF BILL CONTAINING FALSE STATEMENT.—Any officer, agent, or servant of a carrier, who with intent to defraud issues or aids in issuing a bill for goods, knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Section 622.—ISSUE OF DUPLICATE BILL NOT SO MARKED. Any officer, agent, or servant of a carrier, who with intent to defraud issues or aids in issuing a duplicate or provisions of this code, knowing that a former negotiable bill for the same goods or any part of them is outstanding and uncanceled, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

Section 623.—NEGOTIATION OF BILL FOR MORTGAGED GOODS.—Any person who ships goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable bill which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.



Section 624.—NEGOTIATION OF BILL WHEN GOODS NOT IN CARRIER'S POSSESSION.—Any person who with intent to deceive negotiates or transfers for value a bill knowing that any or all of the goods which by the terms of such bill appear to have been received for transportation by the carrier which issued the bill, are not in the possession or control of such carrier, or of a connecting carrier, without disclosing this fact, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

Section 625.—BILL ISSUED WHEN GOODS HAVE NOT BEEN RECEIVED.—Any person who with intent to defraud secures the issue by a carrier of a bill knowing that at the time of such issue, any or all of the goods described in such bill as received for transportation have not been received by such carrier, or an agent of such carrier or a connecting carrier, or are not under the carrier's control, by inducing an officer, agent, or servant of such carrier falsely to believe that such goods have been received by such carrier, or are under its control, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

Section 626.—ISSUE OF NONNEGOTIABLE BILL NOT SO MARKED.—Any person who with intent to defraud issues or aids in issuing a nonnegotiable bill without the words "not negotiable" placed plainly upon the face thereof, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years or by a fine not exceeding five thousand dollars, or by both.

Section 627.—DEFINITIONS.—In this article, unless the context or subject matter otherwise requires—

“Action” includes counterclaim, set-off, and suit in equity.

“Bill” means bill of lading.

“Consignee” means the person named in the bill as the person to whom delivery of the goods is to be made.

“Consignor” means the person named in the bill as the person from whom the goods have been received for shipment.

“Goods” means merchandise or chattels in course of transportation, or which have been or are about to be transported.

“Holder” of a bill means a person who has both actual possession of such bill and a right of property therein.

“Order” means an order by indorsement on the bill.

“Owner” does not include mortgagee or pledgee.

“Person” includes a corporation or partnership or two or more persons having a joint or common interest.

To “purchase” includes to take as mortgagee and to take as pledgee.

“Purchaser” includes mortgagee and pledgee.

“Value” is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a bill is taken either in satisfaction thereof or as security therefor.

A thing is done “in good faith,” within the meaning of this article, when it is in fact done honestly, whether it be done negligently or not.

The provisions of this article do not apply to bills made and delivered prior to the taking effect thereof.

Act of the Legislature, approved May 21, 1919;  
in effect July 22, 1919.

Section 628.—LOSSES NOT WAIVED BY CONTRACT.—A common carrier cannot limit itself from liability in case of gross negligence, fraud, or wilful wrong. The excusable results flowing from the acts of God are those only

which cannot be prevented by the interposition of human agency. In a suit against a railroad company for the freezing of potatoes while en route, this was held not to be a loss for which the company could claim immunity, under the limitation of liability clause in its contract with the shipper. Any movable object can be kept from freezing, and the freezing of any such articles cannot be excused as being an act of God. (Decided by the California District Court of Appeals in the case of Wood, Curtiss & Company vs. the Missouri Pacific Railway Company, which decision is printed in Volume II of California Appellate Decisions, No. 88, page 419.)

A. J. Bledsoe, Attorney-at-Law, Los Angeles, Cal. Yearly contracts will be made with clients for legal advice and services; no contract for less than \$300 per annum; will be pleased to make appointment to discuss the subject.

See title page of this book for office address of A. J. Bledsoe.

## PART III.

### TRADE ACCEPTANCES—LETTERS OF CREDIT— BILLS OF EXCHANGE—BANK CHECKS. TRADE ACCEPTANCES

Section 629.—DEFINITION OF TRADE ACCEPTANCE.—The Federal Reserve Board defines a trade acceptance as a “draft or bill of exchange drawn by the seller on the purchaser of goods sold, and accepted by such purchaser.” A bill of exchange, as applied to trade acceptances, may be defined as “an unconditional order in writing addressed by one person to another, other than a banker, signed by the person giving it, requiring the person to whom it is addressed to pay, in the United States, at a fixed or determinable future time, a certain sum in dollars, to the order of a specified person.” The credit obligation must arise from the purchase of goods, must be for a certain sum of money, payable upon a definite date to the person named therein or to his order. The bill must be drawn by the seller on the purchaser of goods sold, and be accepted by such purchaser.

Section 630.—ACCEPTANCE PROCEDURE.—Upon making shipment to an accepting customer, the seller sends with the shipping documents an acceptance form, into which has been written the net amount of the invoice, the date of the invoice, and the date of maturity. The acceptance is often sent in duplicate, so that the buyer may retain a copy for his own record. If he does not wish to avail himself of the cash discount, he is expected to sign and date the acceptance, designate bank where payable,



and return it to the seller, within the ten-day period.

If a merchant has sold a bill of goods on the terms of, let us say, 2/10/60 (sixty days net, 2% discount if paid within 10 days), at the time the invoice is rendered, the invoice is accompanied by a sixty days' sight draft duly filled out, drawn on the buyer, together with a letter requesting the buyer to "accept" and to return the draft, or, if he should prefer, to pay the bill less two per cent. within ten days and return the draft unaccepted. In case the seller does not wish the buyer to take possession of the goods unless the latter has accepted the draft, the shipping documents, such as railroad bill of lading, etc., are attached to the draft. The draft is marked "D/A" (documents to be delivered against acceptance) and then given to the bank for the purpose of obtaining the acceptance.

Shipping documents should be in negotiable form, i. e., the bill of lading should be made out to shipper's order endorsed in blank.

Section 631.—TRADE ACCEPTANCE NOT A NOTE.—A trade acceptance is not a promissory note. The promissory note deals with all kinds of business transactions, the trade acceptance with current merchandise transactions alone. The trade acceptance is not to be given for borrowed money or past due obligations.

Section 632.—TRADE ACCEPTANCE CANNOT BE USED IN GENERAL CONTRACTS.—A trade acceptance cannot be used generally in connection with miscellaneous contracts. A trade acceptance can be used only in connection with a sale and purchase of goods. For instance, if it were attempted to make such an instrument in connection with a "building contract," or a "labor contract," it would not be a trade acceptance at all, and would not be negotiable as such, because not drawn in connection with a sale and purchase of goods.

Section 633.—DISCOUNT AT FEDERAL RESERVE BANK.—The Federal Reserve Bank has authorized extra low rates for trade acceptances, generally one-half per cent. lower than the rate for promissory notes. Although, except in some special cases, the law does not permit the Federal Reserve bank to discount a trade acceptance having a longer maturity than ninety days, this does not mean that trade acceptances must not be drawn for a longer period. In case of a four months' acceptance, for instance, the commercial bank simply carries it until it comes within the ninety days' limit, when it may be discounted with the Federal Reserve Bank.

Section 634.—FORM OF TRADE ACCEPTANCE.—The following is a form of trade acceptance, approved by the American Trade Acceptance Council:

.....19..... No.....

City of Drawer Date

ON.....PAY TO THE ORDER OF OURSELVES

Date of Maturity

.....DOLLARS (\$.....)

The obligation of the Acceptor hereof arises out of the purchase of goods from the Drawer. The Drawee may accept this bill payable at any Bank, Banker, or Trust Company in the United States which he may designate.  
TO.....

Name of Drawee

.....  
Street Address

Signature of Drawer

.....BY.....

City of Drawee

There must be endorsed on the face of the Acceptance as follows:

Accepted

Date .....

Payable at .....

(Name of bank)

Location of Bank.....

.....  
(Signature of the acceptor)

By.....

## LETTERS OF CREDIT

Section 635.—WHAT IS A LETTER OF CREDIT.—A letter of credit is a written instrument, addressed by one person to another, requesting the latter to give credit to the person in whose favor it is drawn.

Section 636.—HOW ADDRESSED.—A letter of credit may be addressed to several persons in succession.

Section 637.—LETTERS GENERAL OR SPECIAL.—A letter of credit is either general or special. When the request for credit in a letter is addressed to specified persons, by name or description, the letter is special. All other letters of credit are general. A letter of credit addressed to a particular person is limited to him, for the writer must be deemed to have granted it in reliance on his prudence and discretion in acting upon it. A general letter of credit gives to any person to whom it may be shown, authority to comply with its request, and by so doing, it becomes, as to him, of the same effect as though addressed to him by name. Several persons may successively give credit upon a general letter.

Section 638.—LIABILITY OF THE WRITER.—The writer of a letter of credit is, upon the default of the debtor, liable to those who gave credit in compliance with its terms. By giving the letter, the writer obliges himself to accept such bills or orders as may be drawn under it in good faith, and within the limits of the credit specified in the letter.

Section 639.—LETTER OF CREDIT MAY BE A CONTINUING GUARANTY.—If the parties to a letter of credit appear by its terms to contemplate a course of future dealing be-

tween the parties, it is not exhausted by giving a credit, even to the amount limited by the letter, which is subsequently reduced or satisfied by payments made by the debtor, but it is to be deemed a continuing guaranty.

Section 640.—WHEN NOTICE TO THE WRITER NECESSARY.—A letter of credit must by its terms express or imply the necessity of giving notice, or no notice of credit obtained upon it will be necessary. The writer of a letter of credit is liable for credit given upon it without notice to him, unless it can be seen from the letter itself that notice to the writer was intended by the parties. Unless there is something in the nature of the contract or terms of the letter making acceptance or notice necessary as a condition of liability, neither is necessary to bind the writer.

Section 641.—CREDIT GIVEN MUST AGREE WITH TERMS OF LETTER.—The law of California provides, that if a letter of credit prescribes the persons by whom or the mode in which the credit is to be given, or the term of credit, or limits the amount, the writer is not bound except for transactions, which, in these respects, conform strictly to the terms of the letter.

Civil Code, Sections 2858, 2859, 2861, 2862, 2864, 2865.

Section 642.—INTENTION OF PARTIES.—In cases where doubt arises as to the real meaning of a letter of credit, the rule of law is that the terms of the letter will be liberally and reasonably construed. The intention of the parties is the essential thing to be ascertained. But words of doubtful meaning, or technical terms, or local expressions, used in a letter of credit, cannot be taken advantage of, to defeat the liability of one who signs and gives such a letter. True, it is a general rule, that the surety or guarantor should not be held beyond the precise stipulations of his contract, and he has a right to



insist upon the exact performance of any condition inserted in the letter. But when the question is as to the meaning which shall be given to the terms used in the instrument, the law will always be found liberal and reasonable; for letters of credit are commercial instruments, generally drawn up by merchants in brief language, and often loose in their structure and aim; and to give the words of a letter of credit a nice and technical construction, would not only defeat the intention of the parties in many instances, but render them too unsafe a basis to rely on for extensive credits, so often sought in the present active business of commerce throughout the world. Therefore, it is well to remember, that while parties will be held by the law to the terms of their contract, yet the law will not allow a person who advances money on the faith of a letter of credit, however loosely drawn, to suffer loss by any strained or technical construction of the language or directions contained in it.

## BILLS OF EXCHANGE

Section 643.—BILL OF EXCHANGE DEFINED.—A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer.

A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same.

A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession.

Section 644.—INLAND AND FOREIGN BILLS.—An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this state. Any

other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

Section 645.—BILL TREATED AS PROMISSORY NOTE.—Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note.

Section 646.—REFEREE IN CASE OF NEED.—The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need, that is to say in case the bill is dishonored by nonacceptance or nonpayment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may see fit.

Section 647.—ACCEPTANCE.—The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.

The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill and, if such request is refused, may treat the bill as dishonored.

Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value.

An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value.

Section 648.—TIME ALLOWED DRAWEE TO ACCEPT.—The drawee is allowed twenty-four hours after presentment, in which to decide whether or not he will accept the bill; but the acceptance, if given, dates as of the day of presentation.

Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same.

Section 649.—ACCEPTANCE OF INCOMPLETE BILL.—A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by nonpayment. But when a bill payable after sight is dishonored by nonacceptance and the drawee subsequently accepts it, the holder in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.

Section 650.—KINDS OF ACCEPTANCE.—An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere.

An acceptance is qualified, which is—

(1) Conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated;

(2) Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;

(3) Local, that is to say, an acceptance to pay only at a particular place;

- (4) Qualified as to time;
- (5) The acceptance of some one or more of the drawees, but not of all.

Section 651.—RIGHTS OF PARTIES AS TO QUALIFIED ACCEPTANCES.—The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by non-acceptance. Where a qualified acceptance is taken the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must within a reasonable time, express his dissent to the holder, or he will be deemed to have assented thereto.

Section 652.—WHEN PRESENTMENT FOR ACCEPTANCE MUST BE MADE.—Presentment for acceptance must be made—

- (1) Where the bill is payable after sight, or in any other case, where presentment for acceptance is necessary in order to fix the maturity of the instrument; or
- (2) Where the bill expressly stipulates that it shall be presented for acceptance; or
- (3) Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fails to do so, the drawer and all indorsers are discharged.

Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day and before the bill is overdue, to the drawee or some



person, authorized to accept or refuse acceptance on his behalf; and—

(1) Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only;

(2) Where the drawee is dead, presentment may be made to his personal representative;

(3) Where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee.

A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment. When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock, noon, on that day.

Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers.

Section 653.—WHEN PRESENTMENT IS EXCUSED.—Presentment for acceptance is excused and a bill may be treated as dishonored by nonacceptance, in either of the following cases:

(1) Where the drawee is dead, or has absconded, or is a fictitious person or a person not having capacity to contract by bill;

(2) Where, after the exercise of reasonable diligence, presentment cannot be made;

(3) Where, although presentment has been irregular, acceptance has been refused on some other ground.

Section 654.—BILL DISHONORED BY NONACCEPTANCE.—  
A bill is dishonored by nonacceptance—

(1) When it is duly presented for acceptance and such an acceptance as is prescribed by this title is refused or cannot be obtained; or

(2) When presentment for acceptance is excused and the bill is not accepted.

Where a bill is duly presented for acceptance and is not accepted within the prescribed time the person presenting it must treat the bill as dishonored by nonacceptance or he loses the right to recourse against the drawers and indorsers.

When a bill is dishonored by nonacceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder and no presentment for payment is necessary.

Section 655.—PROTEST OF BILL OF EXCHANGE.—Where a foreign bill appearing on its face to be such is dishonored by nonacceptance, it must be duly protested for nonacceptance, and where such a bill which has not previously been dishonored by nonacceptance is dishonored by nonpayment, it must be duly protested for nonpayment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary.

Section 656.—PROTEST — HOW MADE. — The protest must be annexed to the bill, or must contain a copy thereof and must be under the hand and seal of the notary making it, and must specify—

- (1) The time and place of presentment;
- (2) The fact that presentment was made and the manner thereof;
- (3) The cause or reason for protesting the bill;
- (4) The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

Section 657.—PROTEST—BY WHOM MADE.—Protest may be made by—

- (1) A notary public; or
- (2) By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

Section 658.—PROTEST—WHEN MADE.—When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

Section 659.—PROTEST—WHERE MADE.—A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business, or residence of some person other than the drawee, has been dishonored by nonacceptance, it must be protested for nonpayment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

A bill which has been protested for nonacceptance may be subsequently protested for nonpayment.

Section 660.—PROTEST BEFORE MATURITY.—Where the acceptor has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

Section 661.—PROTEST—WHEN DISPENSED WITH.—Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

Section 662.—PROTEST OF LOST BILL.—When a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

Section 663.—ACCEPTANCE FOR HONOR.—Where a bill of exchange has been protested for dishonor by non-acceptance or protested for better security, and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill *supra* protest for the honor of any party liable thereon, or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for the part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.

An acceptance for honor *supra* protest must be in writing, and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

Section 664.—LIABILITY OF ACCEPTOR.—The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

The acceptor for honor, by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance; *provided*, it shall not have been paid by the drawee; *and, provided, also*, that it shall have been duly presented for payment and protested for nonpayment and notice of dishonor given him.

Section 665.—BILL PAYABLE AFTER SIGHT.—Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honor.



Section 666.—**PROTEST OF DISHONORED BILL.**—Where a dishonored bill has been accepted for honor *supra* protest or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honor or referee in case of need.

Section 667.—**PRESENTMENT TO ACCEPTOR FOR HONOR.** Presentment for payment to the acceptor for honor must be made as follows:

(1) If it is to be presented in the place where the protest for nonpayment was made, it must be presented not later than the day following its maturity.

(2) If it is to be presented in some other place than the place where it was protested, then it must be forwarded by mail.

When the bill is dishonored by the acceptor for honor it must be protested for nonpayment by him.

Section 668.—**PAYMENT FOR HONOR.**—Where a bill has been protested for non-payment, any person may intervene and pay it *supra* protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.

The payment for honor *supra* protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor which may be appended to the protest or form an extension to it.

The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays.

Section 669.—**PREFERENCE OF PARTIES.**—Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference.

Section 670.—**SUBSEQUENT PARTIES DISCHARGED.**—Where a bill has been paid for honor, all parties sub-

sequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

Where the holder of a bill refuses to receive payment *supra protest*, he loses his right of recourse against any party who would have been discharged by such payment.

The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest.

Section 671.—**BILLS IN SETS ONE BILL.**—Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill.

Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him.

Section 672.—**LIABILITY OF HOLDER.**—Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills.

The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

Section 673.—**PAYMENT BY ACCEPTOR.**—When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to

him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.

Except as herein otherwise provided where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged.

Act of the Legislature, approved June 1, 1917;  
in effect July 31, 1917.

Section 674.—DAMAGES ALLOWED ON DISHONOR OF BILL OF EXCHANGE.—Damages are allowed, as a full compensation, for interest accrued before notice of dishonor, re-exchange, expenses, and all other damages, in favor of holders for value only, upon bills of exchange drawn or negotiated within this State, and protested for non-acceptance or non-payment. The rate of damages allowed, on dishonor of a foreign bill of exchange, is as follows: (1) If drawn upon any person in this State, two dollars upon each one hundred dollars of the principal sum specified in the bill; (2) If drawn upon any person out of this State, but in any of the other States west of the Rocky Mountains, five dollars upon each hundred dollars of the principal sum specified in the bill; (3) If drawn upon any person in any of the United States east of the Rocky Mountains, ten dollars upon each hundred dollars of the principal sum specified in the bill; (4) If drawn upon any person in any place in a foreign country, fifteen dollars upon each hundred dollars of the principal sum specified in the bill.

From the time of notice of dishonor and demand of payment, lawful interest is allowed upon the aggregate amount of the principal sum specified in the bill, and the damages mentioned in the preceding paragraph.

If the amount of a protested bill of exchange is expressed in money of the United States, damages are estimated upon such amount without regard to the rate of exchange.

If the amount of a protested bill of exchange is expressed in foreign money, damages are estimated upon

the value of a similar bill at the time of protest, in the place nearest to the place where the bill was negotiated, and where such bills are currently sold.

## BANK CHECKS

Section 675.—NATURE OF BANK CHECKS.—In its essential features a bank check has been sometimes likened to a bill of exchange, but it is evident that there are very material differences between them. A bill of exchange must be presented for acceptance, and again for payment. A check is an order to pay the holder a sum of money at a bank, on the presentation of the check and demand of the money; and no further notice is necessary, no acceptance is required or expected. It is well said that one radical difference between a check and a bill of exchange is, that the former need not be accepted, while the latter must be, in order to fix the liability on the drawee. It is requisite to a check that it be drawn on a bank or banker, and that it be payable on demand.

Section 676.—DELIVERY OF CHECK.—It is necessary that there should be delivery of a check before the payee can acquire any rights in it. The same rule applies to a check which applies to a note or to a bill of exchange. It is not valid unless it has been delivered to the payee.

Section 677.—NEGOTIABILITY.—A check is a negotiable instrument, when payable to "bearer," or to the "order" of a person.

Section 678.—POSSESSION OF CHECK.—The mere possession of a check will not justify a bank in making payment to the person in possession, without some identification, or some evidence of genuineness of the indorsement, if an indorsement is in question.

Section 679.—CERTIFIED CHECK.—The certification of a check, when made before delivery, operates in favor of third parties simply as an assurance that it is genuine,



and will be paid. The bank certifying it becomes bound. Beyond this, nothing is added to the legal force or effect of the check. A bank, by certification of a check, becomes entitled to charge the amount thereof to the account of the drawer at the time of certification, thus appropriating to the payment of the check the necessary amount of money from the funds on deposit to the credit of the drawer. By certification of a check the bank enters into an absolute undertaking to pay it when presented, within the period of limitation of actions. The certification is equivalent to an acceptance. When the holder gets the check accepted or certified, the drawer and all indorsers are discharged from liability thereon.

Section 680.—PRESENTMENT AND DEMAND FOR PAYMENT.—A person who takes a check does so with the legal obligation to present it at the bank for payment, within a reasonable time. A check is not designed for circulation, but for immediate presentment for payment, and if not thus presented within a reasonable time according to the circumstances, the indorsers will be released from liability on it. A check must be presented for payment with all the dispatch and diligence consistent with the transactions of commercial concerns.

Section 681.—STOPPING PAYMENT.—The drawer of a check may stop payment, by notifying the bank on which it is drawn that payment is stopped and giving instruction not to pay it. In such case, it is the duty of the bank to refuse payment, and give its reasons for so doing, leaving the drawer and the holder to settle the difficulty between them. But where the check has been certified, it cannot be countermanded by the drawer, because it has passed beyond his control.

Section 682.—PAYMENT OF CHECK BY MISTAKE.—A bank is bound to know the state of its depositor's account; and if it makes a mistake in this respect it must

abide the consequences. Banks are required, and for their own safety are compelled, to know at all times the balance of the credit of each individual depositor, and they take and pay checks at their own risk and peril. If, from negligence or inattention to its own affairs, a bank improvidently pays when the account of a customer is not in condition to warrant it, or if, by mistake, a check is paid when the drawer has no funds in bank, it must look to the customer for rectification or repayment, and not to the party to whom the check was paid.

Section 683.—RIGHTS AND LIABILITIES OF INDORSERS.—The rights and liabilities of indorsers are the same as to all negotiable instruments. Checks, bills of exchange, and promissory notes, with respect to indorsers, are considered according to the same rules. For the law as to indorsers, their rights and liabilities, see the subject of "Promissory Notes," where the subject is fully treated.

Section 684.—REFUSAL TO PAY.—A check being payable immediately and on demand, the holder can only present it for payment, and the bank can fulfill its duty to the depositor only by paying the amount demanded. The holder has no right to demand from the bank anything but payment of the check, and the bank has no right as against the drawer, to do anything but pay it. If the bank refuses to pay the check, when there are funds sufficient on deposit, the holder has recourse against the maker and the indorsers, and the maker, in turn, has a right to sue the bank.

Section 685.—LIABILITY OF BANK TO DEPOSITOR FOR REFUSAL TO PAY CHECKS.—Where there is money on deposit in a bank, sufficient to pay checks drawn by the depositor, and the bank refuses to pay the checks, the liability of the bank is only for the money deposited and interest from the date of refusal to pay. The bank is not liable in damages for loss of credit, or sacrifice

of goods, or expenses of litigation, or other injuries sustained.

Smith's Cash Store, of San Francisco, sued the First National Bank of San Francisco for \$100,000 damages, the plaintiff alleging that it deposited with the bank on a certain date the sum of \$4,000, and drew checks against this deposit aggregating \$3,679.55, which the bank failed and refused to pay; and that plaintiff was injured and damaged in its credit, was compelled to sell goods at a sacrifice, had to make an assignment of property, and was compelled to pay out large sums in litigation; all by reason of the bank's refusal to pay the checks. The Supreme Court decided against the plaintiff, on the ground that it was not entitled to damages at all, and that it could only recover the money deposited. The decision says: "It is well settled here that the relation between a general depositor and the bank in which his deposit is made is simply that of debtor and creditor. The moneys deposited immediately become the property of the bank, and the latter becomes the debtor of the depositor for the amount of the deposit. The original and every subsequent deposit by the customer is in strict legal effect a loan by the customer to the bank, and every payment by the bank to or on account of the customer is a repayment of the loans to that extent. Wherefore it follows that the customer can never hold or charge the bank as a trustee, quasi trustee, factor, or agent. The money placed in the custody of a banker is, to all intents and purposes, the money of the banker, to do with it as he pleases; he is guilty of no breach of trust in employing it; he is not answerable to the principal if he puts it into jeopardy, if he engages in a hazardous speculation; he is not bound to keep it, or deal with it as the property of his principal; but he is, of course, answerable for the amount, because he has contracted, having received that money, to repay to the principal, when demanded, a sum equivalent to that paid into his hands." The defendant in this case was not liable in damages for a conversion of

plaintiff's money to its own use; for the money deposited by plaintiff became, by such deposit, the property of defendant, and the latter could not convert its own money. (Decided by the Supreme Court of the State of California, in the case of Smith's Cash Store vs. First National Bank of San Francisco, which decision is printed in Volume 31 of California Decisions, No. 1686, page 307.)

Section 686.—**FORGED CHECKS.**—If a bank pays a forged check, whether the forgery be in the amount of the check, or in the signature, it cannot deduct the amount so paid from the depositor's account. A bank is bound to know the handwriting and the signature of its depositors, and it takes all the risk of paying a check which is a forgery. If it does pay a forged check it will have to stand the loss.

It is the duty of the depositor to promptly notify the bank of the discovery of a forged check, and negligence on the part of the depositor in this respect may be used by the bank as a defense, if sued for money which it has paid out on forged checks. Where a bank balances a depositor's pass book, containing a debit against him for a payment made on a forged check, and returns the book to him at the same time, this constitutes a statement of his account, making it his duty to examine it within a reasonable time, and to return it to the bank without unreasonable delay, with notice of his objections to it. Where, in any case, the depositor gives notice to the bank of the forgery as soon as possible after detecting it, and without unreasonable delay in the examination of his accounts, the forgery of his check is wholly inoperative, and gives no rights to the bank which pays it; on the contrary, the depositor, if the bank insists on debiting his account with the amount paid out on a forged check, can sue the bank and recover the money from it.

Section 687.—**FORGED INDORSEMENTS.**—The drawer of a check is not presumed to know the signature of the



payee. The bank must at its peril determine the genuineness of the signature of indorsers. When, therefore, a bank returns to its depositor a check, as evidence of a payment made by his direction, he has the right to assume that the bank has ascertained the indorsement upon it to be genuine. A bank is bound to satisfy itself of the genuineness of indorsements on a check made payable to a certain person or order, and must alone bear the responsibility of determining that question.

Section 688.—GARNISHMENT OF MONEY ON DEPOSIT.—A check is not an assignment of the funds upon which it is drawn, and there is no obligation of a bank to the holder of a check of a depositor until the check is presented for payment and accepted or certified. The delivery of a check does not operate as an assignment of the funds drawn upon; and where the funds are garnished as those of the drawer, before the check is presented for payment, the garnishment will hold. An ordinary uncertified check upon a general bank account is neither a legal nor an equitable assignment of any part of the sum standing to the credit of the depositor, and confers no right upon the payee which he can enforce against the bank. Therefore, any attaching creditor of the depositor will hold the funds, by serving a garnishment upon the bank before a check given another for the money deposited has been presented for payment at the bank. (Decided by the Supreme Court in the case of *Donohoe-Kelly Banking Company vs. Southern Pacific Company*, which decision is printed in Volume 25, No 1350, California Decisions, page 60.)

Section 689.—LOST CHECK.—The rule that the holder of a check upon a bank has no recourse upon the drawer thereof, until he has presented it to the bank upon which it was drawn and had payment refused, has no application to a lost check. No rule of law would require a bank without the consent of the depositor, to pay out the money

of its depositor, upon an alleged lost check, and a demand that it do so would be fruitless. Its obligation is to pay the depositor's money to holders of checks issued by him, and its protection, and the protection of all depositors, requires that the checks be produced and surrendered before payment is made. Until the check is presented, no liability attaches to the bank. No hardship results to the drawer of a check in such a case. If it be non-negotiable, he can, upon notice of the loss, fully protect his interests by countermanding the order and stopping payment. If it be negotiable, and likely to reach the hands of a bona fide holder, he may insist upon an indemnity bond before giving a new check, or otherwise paying the debt intended to be discharged by it. (Decided by the District Court of Appeals, in the case of California National Bank vs. Weldon, which decision is printed in Vol. 11, California Appellate Decisions, page 649.)

Section 690.—LIABILITY OF BANK FOR PAYMENT OF CHECK AFTER DEATH OF DRAWER.—The delivery of a check, with instructions not to present it for payment until after the death of the drawer, does not operate as an assignment of the funds drawn upon, and is not valid as a gift; and where the bank pays the check after the drawer's death, an action will lie against the bank to recover the money for the estate of the decedent. (Decided by the Supreme Court in the case of Pullen vs. Placer County Bank, which decision is printed in Volume 25, No. 1349, California Decisions, page 51.)

Section 691.—DRAWING CHECK WITH INTENT TO DEFRAUD.—Every person who, wilfully, with intent to defraud, draws or delivers to another person any check or draft, on a bank, knowing at the time that he has not sufficient funds in or credit with the bank to meet such draft or check in full upon its presentation, is guilty of a felony. The punishment is fixed at not less than one nor more than fourteen years in the State prison.

Act of the Legislature, approved March 19, 1907.

WRITTEN OPINIONS.—A. J. Bledsoe, Attorney-at-law, Los Angeles, Cal., will prepare opinions in writing on any legal question submitted to him, each opinion giving the authorities and decisions. For this service he charges a minimum fee of \$10, with an increased fee in cases where the necessary labor and research justify it. See title page of this book for office address of A. J. Bledsoe.

## PART IV.

### ASSIGNMENT FOR BENEFIT OF CREDITORS

Section 692.—ASSIGNMENT BY INSOLVENT DEBTOR.—An insolvent debtor may in good faith execute an assignment of his property in trust for the benefit of his creditors and the satisfaction of their claims. Every such assignment must be in writing, and must contain a list of the names of the creditors of the assignor, and their places of residence and amounts of their respective demands, and the amounts and nature of any security therefor, and must be made to the Sheriff of the county, or city and county, wherein the assignor resides, if the assignor resides within this State; or in case the assignor resides out of this State, then to the Sheriff of the county, or city and county, wherein the property assigned, or some of it, is situated; but when the assignor resides out of the State, an assignment may, by its terms, transfer any property of the assignor in this State. The Sheriff must take possession of all the property so assigned to him. When the assignment has been made, the Sheriff must immediately, by mail, notify the creditors named in the assignment, at their places of business or residence as given therein, to meet at his office on a day and hour to be appointed by him, of not less than eight or more than ten days from the date of the delivery of the assignment to him, for the purpose of electing one or more assignees, as they may determine, in the place and stead of the Sheriff, and must also publish a notice of such meeting, and the purpose thereof, at least once before such meeting, in some newspaper published in his county,



or city and county. The notice so to be mailed must also contain a statement of the amount of the demand of the creditor, and the amount and nature of any security therefor, as set forth in the assignment; and if any creditor shall not find the amount of his claim to be correctly so stated, he may file with the Sheriff, at or before such meeting, a statement, under oath, of his demand, and such statement shall, for the purpose of voting, be accepted by the Sheriff as correct; and when no such statement is filed, the statement of amount as set forth in the assignment must be accepted by the Sheriff as correct. No creditor having a mortgage or pledge of real or personal property of the debtor, or lien thereon, for securing the payment of a debt owing to him from the debtor, shall be allowed to vote any part of his claim at such meeting of creditors unless he shall have first conveyed, released, or delivered up his security to the Sheriff, for the benefit of all creditors of the assignor. At such meeting, the Sheriff must preside, and a majority in amount of demands present or represented by proxy must control all questions and decisions. The creditors may adjourn the meeting from time to time, and may vote on all questions, either in person, or by proxy signed and acknowledged before any officer authorized to take acknowledgments, and filed with the Sheriff. At the meeting, the creditors may elect one or more assignees from their own number, in the place and stead of the Sheriff, and the person or persons so elected shall afterward be the assignee or assignees; and the Sheriff, by transfer in writing, must at once assign to such elected assignee or assignees all the property so assigned to him, and deliver possession thereof. The Sheriff, before the delivery of the assignment, must be paid the expenses incurred by him, and fees in such amount as would by law be collectible if the property assigned had been levied upon and safely kept under attachment. Thereupon such elected assignee or assignees shall take, and hold, and

dispose of all such property and its proceeds, for the benefit of the creditors of the debtor.

Civil Code, Section 3449.

Section 693.—WHAT IS INSOLVENCY.—A debtor is insolvent, within the meaning of the law, when he is unable to pay his debts from his own means, as they become due. But a person, although insolvent, is not prevented by the law from transferring, and may lawfully transfer property in this State to a particular creditor or creditors, for the purpose of paying or securing a debt due, provided the transfer is made in good faith.

Section 694.—VOID ASSIGNMENT.—An assignment for the benefit of creditors is void against any creditor of the assignor not assenting thereto, in the following cases: (1) If it give a preference of one debt or class of debts over another; (2) If it tend to coerce any creditor to release or compromise his demand; (3) If it provide for the payment of any claim known to the assignor to be false or fraudulent, or for the payment of more upon any claim than is known to be justly due from the assignor; (4) If it reserve any interest in the assigned property, or in any part thereof, to the assignor, or for his benefit, before all his existing debts are paid; (5) If it confer upon the assignee any power which, if exercised, might prevent or delay the immediate conversion of the assigned property to the purposes of the trust; (6) If it exempt him from liability for neglect of duty or misconduct.

Civil Code, Section 3457.

Section 695.—INVENTORY TO BE MADE BY DEBTOR.—Within twenty days after making an assignment for the benefit of his creditors, the debtor must make and file, in the office of the County Recorder of the county in which he resided at the date of the assignment, a full and true inventory showing: (1) All the creditors of the assignor;

(2) The place of residence of each creditor, if known to the assignor; or, if not known, that fact must be stated; (3) The sum owing to each creditor, and the nature of each debt or liability, whether arising on written security, account, or otherwise; (4) The true consideration of the liability in each case, and the place where it arose; (5) Every existing judgment, mortgage, or other security for the payment of any debt or liability of the assignor; (6) All property of the assignor at the date of the assignment, which is exempt by law from execution; and, (7) All of the assignor's property at the date of the assignment, both real and personal, of every kind, not so exempt, and the encumbrances existing thereon, and all vouchers and securities thereto, and the value of such property according to the best knowledge of the assignor.

The inventory must be sworn to by the assignor.

Civil Code, Section 3461.

Section 696.—FAILURE TO FILE INVENTORY.—A failure on the part of a debtor to make and file the inventory mentioned in the last section does not render the assignment void. The law provides that if the debtor fails in his duty to file the inventory, the assignees may make and file for record a verified inventory of all assets received by them; and the court, on petition of the assignee, will compel the debtor to appear and be examined relative to all matters embraced in the assignment, and will also compel him to bring with him into court all his books, vouchers, and papers relating to the assigned property. The court will then have power to order the surrender of the books, papers, and vouchers to the assignee, to be retained by him until his trust is fully completed and performed.

Section 697.—EFFECT OF FAILURE TO RECORD ASSIGNMENT.—An assignment for the benefit of creditors is void against creditors of the assignor, and against purchasers and encumbrancers in good faith and for value, unless

it is recorded, and unless either the inventory required of the assignor, or the inventory required of the assignee or assignees, is filed in the manner provided by law.

Civil Code, Section 3465.

Section 698.—BOND OF ASSIGNEE.—No bond is given by the Sheriff, but he is liable on his official bond for the care and custody of the property while in his possession. Within forty days after the date of the transfer by the Sheriff, the assignee must enter into a bond, in such amount as may be fixed by a judge of the Superior Court of the county, or city and county, in which an inventory is filed, with sufficient sureties to be approved by such judge, and conditioned for the faithful discharge of the trust and the due accounting for all moneys received by the assignee, which bond must be filed in the same office with the inventory; and any assignee failing to give such bond may be removed by the Superior Court on petition of the assignor or any creditor, and his successor may be appointed by the court.

Civil Code, Section 3467.

Section 699.—ACCOUNTING BY ASSIGNEE.—After six months from the date of an assignment for the benefit of creditors, the assignee may be required, on the petition of any creditor, to account before the Superior Court of the county where the inventory was filed. The assignee's account, when rendered, must make a full and true showing of all his acts with relation to the property assigned to him.

Section 700.—PROPERTY EXEMPT FROM ASSIGNMENT.—Property exempt from execution, and insurance upon the life of the assignor, do not pass to the assignee by a general assignment for the benefit of creditors, unless the instrument specially mentions them, and declares an intention that they shall pass thereby.

Civil Code, Section 3470.



Section 701.—COMPENSATION OF ASSIGNEE.—The assignee is entitled to a reasonable compensation for his services, and also to all necessary expenses incurred by him in the management of his trust.

Section 702.—ASSIGNEE PROTECTED FOR ACTS DONE IN GOOD FAITH.—The assignee is protected for acts done in good faith, and will not be held liable for such acts if the assignment is afterward declared by a court to be void.

Section 703.—ASSIGNMENT NOT REVOCABLE.—An assignment for the benefit of creditors, which has been executed and recorded so as to transfer the property to the Sheriff, or a transfer by the Sheriff to the elected assignee or assignees which has been executed and recorded, cannot afterward be modified or canceled by the parties without the consent of the assignor and of every creditor.

Civil Code, Section 3473.

Section 704.—CREDITORS' CLAIMS.—Notice to the creditors must be published by the assignee, and a copy mailed by him to each creditor, and the creditors must prove their claims; and after the expiration of thirty days from the first publication of the notice, the assignee may, in his discretion, declare and pay dividends to the creditors whose claims have been presented and allowed. No dividend already declared shall be disturbed by reason of claims being subsequently presented and allowed; but the creditor presenting such claim shall be entitled to a dividend equal to the per cent already declared and paid before any further dividend is made; provided, however, that there be assets sufficient for that purpose; and provided, that the failure to present such claim shall not have resulted from his own neglect; and the creditor shall attach to such claim a statement, under his oath, showing fully why it was not before presented.

**Section 705.—CREDITOR HOLDING MORTGAGE OR PLEDGE.**

When a creditor has a mortgage, or a pledge of personal property of the debtor, or a lien thereon as security for the payment of a debt due him from the debtor, and shall not have conveyed, released, or delivered up such security to the Sheriff, he shall be admitted as a creditor only for the balance of the debt, after deducting the value of such mortgage, pledge, or lien, to be ascertained by agreement between him and the assignee, or by a sale thereof, to be made in such manner as the Superior Court of the county in which the assignment is made shall direct; or the creditor may release or convey his claim to the assignee upon such property, and be admitted to prove his whole debt. If the value of the property exceeds the sum for which it is so held as security, the assignee may release to the creditor the debtor's right of redemption on receiving such excess; or he may sell the property, subject to the claim of the creditor, and in either case the assignee and creditor, respectively, shall execute all deeds and writings necessary or proper to consummate the transaction. If the property is not sold or released, and delivered up, the creditor will not be allowed to prove any part of his debt.

**OPINIONS BY MAIL.**—Opinions will be prepared in writing, and sent by mail, to any client in any part of the State. Request by letter for a legal opinion, on any subject covered by the California laws, will receive prompt attention and careful investigation. A. J. BLEDSOE, ATTORNEY-AT-LAW, Los Angeles, Cal. See title page of this book for office address of A. J. Bledsoe.

## PART V.

### COLLECTION OF BILLS AND ACCOUNTS

Section 706.—METHODS OF MAKING COLLECTIONS.—Custom will control to a great extent the methods of making collections in force in different localities, but whether collections be made monthly, quarterly, semi-annually, or annually, there are certain provisions of the law of the State which apply to all methods, and which must constantly be kept in mind. Whether a creditor collects his bills monthly, or at longer intervals of time, the law leaves to his own choice. The parties may contract for payment at any time or place, and the law will enforce the contract.

Section 707.—PRESENTMENT OF BILLS OR STATEMENTS OF ACCOUNT.—The debtor is entitled to have a bill or statement of account, showing the claim of his creditor. This is usual in every business, and it is more necessary in commercial affairs than in any other, for the book accounts of sales of merchandise, and other similar commercial transactions, are usually kept by the creditor alone.

Section 708.—ITEMIZED ACCOUNT.—When a bill has been presented which is not itemized, the debtor has a right to demand of the creditor an itemized account, showing in detail all the items of the claim presented to him.

Section 709.—OPEN AND CURRENT ACCOUNT.—An open account is an account where no balance has been struck.

Until a balance is struck, even though there have been mutual dealings between the parties, the account is open and current.

Section 710.—WHEN OPEN ACCOUNT OUTLAWED.—An open account will outlaw in ~~four~~<sup>2</sup> years. That is, if there is a claim, for goods purchased, for instance, upon an open account, all items dating back more than ~~four~~<sup>2</sup> years will be outlawed, and in a suit for the amount of the bill the plaintiff cannot recover for any item more than ~~four~~<sup>2</sup> years old. So, in a suit for work or labor performed by the day or month, where there has not been a mutual account, no part can be collected except for the work done within ~~four~~<sup>2</sup> years.

Code of Civil Procedure, Section 337.

Section 711.—MUTUAL ACCOUNT.—To constitute a mutual account there must be reciprocal demands. An account is mutual when each party makes charges against the other in his books for property sold, service performed, or money loaned or advanced. A payment on account will not make the account mutual. Mutual accounts are only where each party has a demand or right of action against the other. Thus, where a merchant sells a farmer goods, and the latter sells and delivers to the merchant, hay, grain, or a horse, or any other article of personal property, in the ordinary course of business, he has a demand against the merchant, and the merchant has a demand against him, and thus the account between them is a mutual account. In the course of mutual dealings between parties, the balance due may sometimes be on the one side, and sometimes on the other, and in the ascertainment of the state of account, each may use his own demands as set off against that of the other until the less is exhausted by the greater. Where it appears, first, that the account between the parties consists of reciprocal demands; second, that the account is open; and third, that the account consists of different items of



## COLLECTION OF BILLS AND ACCOUNTS

Section 710, page 588—Wherever in said section the words “four years” appear, change so as to read “two years.”

Page 597, add the following:

(a) FRAUDULENT REMOVAL OF PROPERTY—Every debtor who fraudulently removes his property or effects out of this state, or fraudulently sells, conveys, assigns or conceals his property with intent to defraud, hinder or delay his creditors of their rights, claims or demands, is punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both; **provided, however**, that where the property so removed or sold or conveyed or assigned or concealed, consists of a stock in trade or a part thereof, of a value exceeding one hundred dollars, the offense shall be a felony and punishable as such.

Act of Legislature of California, approved May 9, 1921; in effect July 9, 1921.

(b) SMALL CLAIMS COURT—A small claims court has been created. All Justice Courts are small claims courts, where the money only is sued for not over \$50. An affidavit must be made before the Justice of the amount due. The Justice fixes the time for the defendant to appear, not more than 15 days nor less than 5 days from the date of the order. No attorney is allowed to appear in the case on either side. No complaint or answer is required. The defendant may appeal to the Superior Court, but if he loses there he must pay attorney's fee to the plaintiff of \$15. The law provides that no fee or charge of any kind or nature shall be charged or collected by the Justice or any officer for services rendered in the case.

Act of the Legislature of California, approved May 16, 1921; in effect July 16, 1921.



different dates; it is then said to be a mutual, open, and current account.

Section 712.—WHEN MUTUAL ACCOUNT OUTLAWS.—A suit may be brought on a mutual account at any time within four years from the date of the last item proved in the account on either side. When any item of a mutual account is within the four years, none of the account is outlawed, though some of the items may be more than four years old.

Code of Civil Procedure, Section 337.

Section 713.—STATED ACCOUNT.—An account stated is where an account is balanced and rendered, and the person to whom it is rendered assents to it as being a correct statement of the balance due, and agrees to pay it. The stated account is usually in writing, but under certain circumstances it may be verbal. Where there is an open account, and the parties meet and agree orally before any portion of the account is outlawed upon the balance that is due, and there is an agreement to pay such balance, this will be good as an account stated. The assent to an account stated by the person to whom it is rendered may be expressly and directly given, or such assent may be inferred from circumstances. If the person receiving the statement makes no objection to it, and holds it for a long time apparently satisfied with it, his assent to it will be inferred.

Section 714.—WHEN STATED ACCOUNT OUTLAWS.—When the parties have stated and adjusted their accounts, and thus ascertained the balance, what was before an implied promise to pay what was reasonable, by such adjusting and stating of accounts, at once becomes an expressed promise to pay a sum certain. Where an account stated is based upon an account of one item, a suit must be brought within four years from the date of said item; and where an account stated is based upon an ac-

count of more than one item, the four years will begin to run from the date of the last item.

Act of the Legislature, approved May 10, 1917;  
in effect July 27, 1917.

**Section 715.—INTEREST ON A STATED ACCOUNT.**—The uniform custom of a merchant or manufacturer is presumed to be known to those who are in the habit of dealing with him, and in their dealings they are supposed to act with reference to that custom. When it is the universal custom of a merchant to charge interest after thirty days upon monthly balances due upon open accounts, and where such an account showing the interest charged up regularly is received by the debtor and fully understood by him, and where such account becomes stated, either by the prolonged failure of the debtor to object or by a settlement between the parties, the debtor is bound to pay the balance found due, including the interest charged.

**Section 716.—ASSIGNMENT FOR COLLECTION.**—An open account, a mutual account, or an account stated, may be assigned to a third person for collection. No money need be paid for the assignment. The consideration will be sufficient to sustain the assignment, if the person to whom the account is assigned undertakes on his part to make collection. If the assignee brings suit on the account, and the debtor makes the defense that there was no consideration for the assignment, it will be a sufficient answer to that defense to show that the account was assigned for collection.

**Section 717.—ASSIGNEE MAY SUE IN HIS OWN NAME.**—The assignee for collection may bring the suit in his own name. The law of California provides that every suit must be brought in the name of the real party in interest; but the assignee for collection must contribute his labor and services, and his presumed undertaking and promise



to do so is a sufficient consideration for the assignment to enable him to sue in his own name.

Section 718.—ASSIGNMENT MAY BE VERBAL OR WRITTEN.—The assignment of an account, open, mutual, or stated, may be made verbally or in writing. It is usual to make such assignments in writing, because this of itself affords documentary proof of the assignment; but a verbal assignment will be sufficient, where the proof is conclusive.

Section 719.—ASSIGNMENT BY ONE PARTNER OF PARTNERSHIP ACCOUNT.—One partner may make an assignment of a partnership account, in the name of the firm, and the assignment will be good. It is of no consequence to the debtor, as it in no respect affects his liability, whether the assignment was made at one time or another, or with or without consideration, or by one or by all the members of the firm. One member of a firm may even assign a partnership claim, in the name of the firm, to himself individually, and this will be sufficient to enable him to sue on it, if the other partners do not object. The other partners making no objections, the debtor will not be allowed to do so.

Section 720.—COLLECTION OF ACCOUNTS WHEN BOOKS ARE LOST.—Though the books in which the accounts were kept are lost, from whatever cause, by fire, or theft, or by being mislaid, yet the accounts can be collected, if they can be proved in some other way. First, the loss of the books of original entry must be shown, and diligent search to find them; then, the accounts may be proved by producing other books into which they were copied from the original entry book, or, if none such exist, by the verbal testimony of bookkeepers, agents, clerks, proprietors, or any one who may know what the accounts consisted of.

**Section 721.—WHAT DEBTOR MAY SET OFF AGAINST ASSIGNED ACCOUNT.**—When the assignee of an account sues to recover the amount due, the debtor may set off against the claim any claim which he had against the creditor himself at the time of the assignment, or before notice to him of the assignment. But his claim must be one upon which he could have maintained an independent action, and be one of contract; for he could not, in a suit against him upon an account, brought by either the creditor or his assignee, defend by setting up a demand for damages for a wrong suffered by him.

Code of Civil Procedure, Section 368.

**Section 722.—AUTHORITY OF AGENT IN MAKING COLLECTIONS.**—The authority of agents in making collections will be equal to the power actually or ostensibly delegated to them by the principal. If the debtor is informed by the creditor that a certain person or a bank is his agent to make collections, there can seldom be any danger in inferring full and extensive authority on the part of the agent to do everything necessary in and about the collection. But it often happens that the authority of the agent, and the extent of his powers, must be ascertained, not by any direct communication from the creditor, but from a long-continued course of dealing or custom of trade. If an agent for collection has been in the habit of collecting in a certain manner, or of making discounts upon certain accounts, or has collected regularly for the same firm or person at a particular place for a long time, these facts being known, it will be presumed that he has authority from his principal coextensive with his acts.

**Section 723.—RATIFICATION OF AGENT'S ACTS.**—Even though one who represents himself as an agent to make collections really has no such authority, the creditor for whom the collection is made may so conduct himself as to create a ratification of the agent's acts. Thus, if he receives the proceeds from the agent, or knows of the

manner of collection and makes no objection, or in any way leads the debtor to believe that he is satisfied with the agent's conduct, he will be deemed to have ratified the acts of the agent, and thus bind himself.

Section 724.—AGENT'S COMMISSIONS UPON COLLECTIONS.—The law leaves the agent's commissions upon collections made by him to be regulated by the agreement of the parties. But if a creditor sends a bill or account to an agent, with instructions to collect the same from the debtor, and the agent proceeds to make the collection, and nothing is said about the agent's compensation, there will be an implied obligation on the part of the creditor to pay the agent a reasonable commission. What is a reasonable commission will depend upon circumstances, taking into consideration the nature of the collection, the amount of labor and skill employed, and the amount usually paid, if there is any custom, for such collections in the particular locality or business.

Section 725.—COLLECTION OF BILLS AND ACCOUNTS WHEN DEBTOR IS DEAD.—When the debtor is dead, a claim upon the account must be presented to his Administrator or Executor. The claim must be allowed and approved by the Administrator or Executor and the Judge of the Superior Court. If the claim is not allowed, the creditor can then sue the Administrator or Executor, as the case may be. See the subject, "Estates of Deceased Persons."

Section 726.—SUIT IN JUSTICE COURT ON BILLS AND ACCOUNTS.—A suit to collect the amount of a bill or account must be brought in the Justice Court, when the amount is less than \$300, exclusive of interest. In actions for the recovery of wages for labor performed, the Court must add, as part of the costs, an attorney's fee not exceeding twenty per cent of the amount recovered. This also applies to suits in the Superior Court.

Act of the Legislature, in effect April 28, 1907.

Section 727.—IN WHAT TOWNSHIP SUIT MUST BE BROUGHT.—If the money is to be paid at a certain place, then the suit may be brought in the township and county where the place of payment is situated. But if goods are sold in San Francisco to a person in Ukiah, and the bill is to be paid at Ukiah, then the creditor must sue in the Justice Court in Ukiah Township. If the bill is to be paid at San Francisco, the suit may be brought in the Justice Court there. If there is no agreement as to where the obligation to pay is to be performed, then the suit must be brought in the township and county where the debtor resides.

Section 728.—SUIT IN SUPERIOR COURT ON BILLS AND ACCOUNTS.—If the bill amounts to \$300 or more, exclusive of interest, a suit to collect the amount due must be commenced in the Superior Court. However, the creditor may waive all the excess of his claim, and sue in the Justice Court for a sum less than \$300, exclusive of interest, thus remitting to the debtor all of the account exceeding the amount sued for.

Section 729.—IN WHAT COUNTY SUIT IN SUPERIOR COURT MUST BE BROUGHT.—The same rule applies to suits in the Superior Court as obtains in the matter of Justice Court suits. That is, where there is no place agreed upon for the performance of the debtor's obligation to pay, the debtor has a right to have the suit tried in the Superior Court of the county where he resides; but if the bill is to be paid where the creditor resides, or at some other place, the suit may be tried there. The creditor may bring his suit in the Superior Court of the county where he lives or has his place of business, in any event, and the suit will be tried there, unless the debtor appears and moves for the transfer of the case to the Superior Court of the county of his own residence.

Section 730.—ATTACHMENT OF DEBTOR'S PROPERTY IN SUIT TO COLLECT ACCOUNT.—What property of the debtor



is the subject of attachment, to secure the collection of an account, in a suit by the creditor or his assignee, and what property is exempt from attachment and execution, will be found fully stated under the head of "Attachments and Executions."

Section 731.—MEANS FOR COLLECTION TO BE EMPLOYED BY AGENT.—Authority of an agent to collect implies and includes the right on his part to use all the ordinary means for collection, and among these are the employment of attorneys and the commencement of suits.

Section 732.—PAYMENT TO WIFE OF CREDITOR.—Where a man's wife is in the habit of transacting business for him, receiving and paying out money for him with his consent, payment to her of a debt due him in his presence, without objection from him, is a payment to him.

Section 733.—PAYMENT OF NOTE TO SUPPOSED AGENT.—A party who in good faith makes payments upon a promissory note to one whom he has reason to believe is the authorized agent of the holder thereof, and whose acts in receiving such payments have come to the knowledge of the holder, and have not been repudiated by him, cannot be held for the money so paid to the agent.

Section 734.—TAKING GOODS FOR CREDITORS' CLAIMS.—Where creditors, after receiving an offer of a bill of sale from their debtor, assign their claims to a collecting agent for the purpose of conducting the transaction, with authority "to take the goods in full of the creditor's claims," the agent has authority to agree with the debtor that the sale shall be conditional, and that the goods will be surrendered to him, when enough is realized from the sales to satisfy the claim.

Section 735.—ACCEPTING PROMISSORY NOTE.—Under authority to settle with the debtor, and take anything he can get, an agent has power to accept a promissory note.

Section 736.—COLLECTION OF NOTES BY AGENT.—Authority given an agent to collect money, due on a note and mortgage, is not authority to the agent to accept a conveyance of the mortgaged premises in payment.

One who holds a note for collection cannot, without authority from the payee, agree to discharge one of the joint makers upon payment by him of a part of the sum due.

Although a mortgagee has authorized an agent to collect interest and to receive payment of the principal when due, the agency does not extend to receiving payment of principal before maturity.

The existence of an agent's authority to receive payment of notes may be inferred from the mutual conduct and relations of the parties, or from the general nature of the transactions in which they are concerned and the circumstances surrounding them.

Section 737.—APPLICATION OF PAYMENTS ON ACCOUNT.

Where a payment is made upon general account, with no direction as to its application, the law applies it to the oldest items; that is, the first debits are to be charged against the first credits, and the debt paid according to priority of time. In the case of a running account between parties, where there are various items of debit on one side and of credit on the other, occurring at different times, and no special appropriation of payments constituting the credits has been made by either party, the successive payments and credits are to be applied in discharge of the items of debit antecedently due, in the order of time in which they stand in the accounts. In other words, each item of payment or credit is applied in extinguishment of the earliest items of debt, until it is exhausted.

Section 738.—FORM OF ASSIGNMENT OF AN ACCOUNT.—The following is a form of assignment of an account:

Know all men by these presents, that I.....  
of....., State of California, in consideration of.....  
dollars to be paid by.....of..... State of

California, the receipt whereof is hereby acknowledged, do hereby sell, assign, and transfer to said.....all and whatsoever sum or sums of money now due and becoming due to me from.....of.....State of California; to have and to hold the same to the said....., with power to collect the same in my name and as my attorney hereunto duly authorized, to his own use.

It is expressly understood, however, that I, the said....., am forever to be kept and saved harmless by the said.....from all cost or charge hereafter, in any way or manner, for and from the expense of the collection of the ~~sum~~ and sums hereby sold and assigned.

In witness whereof I have hereunto set my hand and seal this.....day of.....19.....

.....(Seal.)

A. J. BLEDSOE, ATTORNEY-AT-LAW, Los Angeles, Cal.—Corporations organized and advised; capital stock; issue and sale of stocks and bonds; assessments; increase of capital stock; election of directors; general corporation law of California applied to particular cases. See title page of this book for office address of A. J. Bledsoe.

## PART VI.

### NOTES AND MORTGAGES NOTES

Section 739.—WHAT IS A PROMISSORY NOTE.—The statute law of California defines a promissory note to be “an instrument negotiable in form, whereby the signer promises to pay a specified sum of money.” But, while it is defined as an instrument “negotiable in form,” it may be not negotiable, and still be a promissory note. And the law of the State, as well as the rules of commercial business, recognizes two classes of promissory notes, negotiable and non-negotiable. The difference between these two classes,—what constitutes a negotiable note, and what is meant by a non-negotiable note,—will be found stated further on, in other sections.

Civil Code, Section 3244.

Section 740.—WHO MAY BE PARTIES.—All persons capable of entering into a contract may be parties to a promissory note, and be bound by it. And all persons in California are capable of contracting except minors, persons of unsound mind, and persons deprived of civil rights. A minor in California is a male under the age of 21 years, or a female under the age of 18 years. A minor under the age of 18 cannot make a contract relating to real property, or relating to any personal property not in his immediate possession or control; but he may make any other contract in the same manner as an adult, subject to certain conditions, stated in the next Section. A person of unsound mind, entirely without understanding, as an idiot or lunatic, has no power to make a contract of



any kind; but a contract may be made by a person of unsound mind who is not entirely without understanding, such a contract, however, being subject to be set aside in court. A person deprived of civil rights is not capable of making a contract while in that condition. A person is deprived of civil rights when he is sentenced to imprisonment in the State Prison for life, and his civil rights are suspended during the term when he is sentenced for a term less than life. A convict may, however, make and acknowledge a sale and conveyance of property.

Civil Code, Sections 33, 34, 38, 39, 1556; Penal Code, Sections 673, 674, 675.

Section 741.—NOTE MADE BY MINOR.—A minor may make a promissory note at any time before he comes of age. But, if he does make a promissory note while under the age of 18 years, he may disown and repudiate it, either before he comes of age or within a reasonable time afterwards, by giving notice that he disaffirms it. If he dies before coming of age, his heirs or executors have a right to disown and repudiate the note. No part of a note made by a minor under the age of 18 years can be collected, if he repudiates and disaffirms it before he reaches his majority, or within a reasonable time afterwards. If a minor over 18 years of age makes a note, he may likewise repudiate and disaffirm it, before becoming of age or within a reasonable time afterwards, but he must restore the consideration to the party from whom it was received. Thus, if a young man, over the age of 18 and under 21 years of age, borrows a sum of money, and makes his note as security, he may disown and repudiate the contract in the manner before stated, but he must return to the lender the money he actually received. The reason of the distinction between the contracts of minors under the age of 18 and the contracts of minors over 18 years is this, that a minor under the age of 18 is presumed not to have arrived at an age of judgment and discretion sufficient to protect him from the schemes of those who might take

advantage of his infancy to defraud him; and all persons who enter into a contract with a minor under the age of 18 must do so at the peril of having such a contract absolutely disowned and disaffirmed.

Civil Code, Section 35.

Section 742.—NOTE MADE TO MINOR.—A promissory note may be made to a minor, and he takes it subject to the same right to disaffirm the contract as he possesses with relation to a note made by him. If he takes a note made to himself, and does not give notice of disaffirmance to the maker, before he attains his majority or within a reasonable time afterwards, the maker will be bound, and the note can be collected. Also a minor who takes a note made to himself may transfer it by indorsement to another, and the person to whom he indorses the note can collect it, unless after indorsement the minor gives notice to the maker that he disaffirms and repudiates the note. In other words, the person to whom a minor indorses a note will take it subject to the right of the minor to disaffirm it.

Section 743.—NOTE MADE BY MARRIED WOMAN.—In this state a married woman may enter into any contract with any person, respecting property, which she might do if unmarried. She may buy or sell, lease or mortgage, lend or borrow, in her own name and on her own account. It follows, as a matter of course, that a note made by a married woman is a valid and binding obligation, for she has the right to make it. But a note made by a married woman, and signed by her alone, can only be collected out of her separate property. The community property belonging to the husband and wife is not liable for the contracts of the wife made before marriage. The separate property of the wife, out of which alone a note made by her can be collected, includes all property which she owned before marriage, and all property which she acquires after marriage by gift, or by will, or by descent

to her as heir, and the rents and profits of such property. If a note made by a married woman is sued on, the judgment can only be enforced against her separate property. A married woman may contract with her husband as well as with others, and a valid note may be made by her to him.

Civil Code, Sections 158, 162.

Section 744.—NOTE MADE TO MARRIED WOMAN.—A promissory note may be made to a married woman, and she may collect it alone, without reference to her husband, if it relates to her separate property. She may legally take a promissory note from her husband, as well as from others. She may sue in her own name to collect a note made to her, if it concerns her separate property, and her husband need not be a party to the suit.

Code of Civil Procedure, Section 370.

Section 745.—NOTE MADE BY CORPORATION.—A promissory note may be made by a corporation, as well as by a natural person. But there are certain necessary requisites to the validity of a note made by a corporation which do not exist in the case of a natural person. While a man may act as his own individual will shall dictate, a corporation, being a creature without a soul, can only act by means of agents. These agents may have general powers delegated to them, which serve for all occasions, or they may have special powers given them, for a certain prescribed purpose. In either case, many important questions frequently arise as to the power of its agents to bind a corporation. A corporation must be managed and controlled by a Board of Directors, having under them, and subject to their directions, certain officers or other agents. In California, the Board of Directors of a corporation may consist of a number, not less than three, or any larger number, selected from among the members or stockholders. A majority of the Board constitutes a quorum. Unless a quorum of the Board of Directors is present and

acting, no business performed is valid as against the corporation. The Directors are agents of the corporation only when they act as a Board. Therefore, if a corporation makes a note, such action must be authorized by its Board of Directors, a majority of the Board being present. A corporation must have a seal. It can only do the business for which it was organized. A corporation organized for one purpose cannot carry on business for another purpose. In the course of its legitimate business, a corporation may borrow money, or secure a creditor, and make its note therefor. This is done by the vote of the Directors, at a regular meeting, a majority being present. A record of the votes must be kept, the ayes and noes being recorded. A majority of the Board must vote in favor of the proposition. The execution of the note being thus authorized, the President may sign the name of the corporation, affix the seal of the corporation, and deliver the note for the corporation. No director must be financially interested in the transaction in which the note is authorized to be executed, in any way which conflicts with the interests of the corporation. If any director is so interested, and it requires his vote to make a majority in favor of the proposition, the action of the Board will not be legal, and the note will be void. The note must be made in the legitimate business of the corporation, otherwise it will be void. For instance, if the directors of a banking corporation should borrow money to build a railroad, the building of railroads not being one of its purposes, the act of the directors is outside of their power, and the note is invalid. Every person taking a note from a corporation is presumed to know the purposes of its organization, and is presumed to know whether the execution of the note was authorized as the law directs. Therefore the person to whom the note is made is bound to inform himself of the facts; for, if the note has not been made by legal authorization of the directors, or if it is outside the power of the corporation, and not within its legitimate business, in a suit on the



note, the corporation can make that defense and defeat the collection of the note. If a note has been made, in the manner and for a purpose authorized by law, the corporation is legally bound to pay it. And, further, each stockholder in the corporation becomes bound for the payment of the note. Each stockholder is individually and personally liable for such proportion of the note of the corporation as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation. The liability of each stockholder is determined by the amount of stocks or shares owned by him at the time the note was made. In corporations having no capital stock, each member is individually and personally liable for his proportion of the amount due on the note. It sometimes happens, too, that, after the president or other agent of the corporation has made a note for it, without authority first given, but for the legitimate uses and purposes of the corporation, the directors afterward ratify the act of the agent. This ratification may be by a resolution passed at a meeting of the board, or it may occur where the corporation enjoys, in its proper business, the fruits of the transaction. In either case, the corporation and its stockholders or members are equally bound as when the note is made by previous authority. Where the transaction concerning the execution of a promissory note by a corporation is fully entered in the books of the corporation, and notice thus imparted to it, and after such notice the corporation retains the consideration of the transaction, and thus accepts the benefits, it must be held to have ratified the transaction. (Decided by the Supreme Court of California, in the case of Curtin vs. Salmon River Hydraulic Gold Mining and Ditch Company, which decision is printed in Volume 26, California Decisions, page 949.)

Civil Code, Sections 290, 305, 308, 322.

Section 746.—NOTE MADE TO CORPORATION.—A note may be made to a corporation, as well as by it. The note

should be made to the corporation by its corporate name, but a mistake in the name will not invalidate the note. If there is a mistake in the name of the corporation, in the note, that will make no difference, if it can be reasonably ascertained from the note what corporation is intended. Having taken and received the note, the corporation has the same rights, with reference to its collection, as an individual would have.

Civil Code, Section 357.

Section 747.—NOTE MUST BE IN WRITING.—There is no such thing as a verbal promissory note. A promissory note must be in writing.

Section 748.—NOTE MAY BE IN PENCIL.—While a promissory note must be in writing, such writing need not be in ink; it may be in pencil; and it need not be all in the handwriting of the maker; for it may be printed, or it may be typewritten, yet if the name of the maker is signed to it, the note will be valid.

Section 749.—MUST BE FOR THE PAYMENT OF MONEY.—A promissory note must be for the payment of money, and for the payment of money only. So, a written promise to pay money and goods, or to pay goods alone, is not a legal promissory note. No written promise to pay is a valid promissory note, unless it be for the payment of money, and of money only. But it may be made payable in the money or currency of any other country, as well as in the money of the United States. It may be made payable in the money of England, or France, or Spain, or Holland, or Italy, or of any other country, and will be just as binding as though made payable in the coin of the United States. It may be made payable in coins, such as guineas, ducats, doubloons, crowns, or in dollars, or in pounds sterling.

Civil Code, Section 3244.

**Section 750.—MUST BE FOR A CERTAIN SPECIFIED AMOUNT.**—Not only must the note be for the payment of money, but it must also be for a certain specified amount. The amount stated in the note must be fixed and certain. Therefore, if the promise be, to pay a specified sum of money, with all other sums that may be due; or, to pay a specified sum of money, and the demands of another person; or, to pay a specified sum of money, after deducting allowances and expenses; in all such cases the instrument is void as a promissory note, because the amount to be paid is not fixed with certainty on the face of the note. The amount to be paid, however, if it be a fixed sum, need not be written in words, but may be expressed in figures.

Civil Code, Section 3244.

**Section 751.—MUST NOT BE SUBJECT TO ANY CONDITION OR CONTINGENCY.**—The note, to be valid, must not be subject to any condition or contingency which might defeat the promise to pay. The money must be payable absolutely, and must not depend upon the happening or not happening of some event. Consequently, if a note is made payable provided a thing is done, or provided a thing is not done, or which makes the payment depend upon any contingency or uncertainty, it is not a promissory note.

**Section 752.—FORM OF NOTE.**—A promissory note need not be in any particular form, so long as it is certainly to be seen on the face of it who is the maker, to whom it is payable, the sum to be paid, and an absolute promise to pay it. The most common form of negotiable promissory note in use in California, and one which answers every purpose, is as follows:

....., Cal., ....., 19.....  
 .....after date, for value received, I promise  
 to pay....., or order, at.....,  
 California, the sum of.....Dollars,  
 Gold Coin of the United States, with interest thereon in

like Gold Coin at the rate of.....per cent per annum from date until paid. Interest payable semi-annually, and if not so paid to be added to the principal and bear interest at the same rate until paid.

Or the note may be made as follows:—

....., Cal., ....., 19.....

One day after date, for value received, I promise to pay....., or order, at..... California, the sum of.....Dollars, Gold Coin of the United States, with interest thereon in like Gold Coin at the rate of.....per cent per annum from date until paid. Interest payable semi-annually, and if not so paid to be added to the principal and bear interest at the same rate until paid.

Or the note may be made as follows:—

....., Cal., ....., 19.....

For value received, I promise to pay..... or bearer the sum of.....Dollars, Gold Coin of the United States, with interest thereon in like Gold Coin at the rate of.....per cent per annum from date until paid. Interest payable semi-annually, and if not so paid to be added to the principal and bear interest at the same rate until paid.

Section 753.—TIME OF PAYMENT.—It is not absolutely necessary that a note should state the time of payment. If it does state the time of payment, it is due on the day stated, or, when that day is a holiday, the next business day. If it does not specify the time of payment, but merely "For value received I promise to pay," it is payable immediately. If the day of payment falls on Sunday, or Fourth of July, or Christmas, or Thanksgiving, or any other legal holiday, the note is due on the next day.

Civil Code, Sections 3099, 3132.

Section 754.—PLACE OF PAYMENT.—A note is valid which does not specify any place of payment. If the note



specifies a place of payment, as, "At San Francisco," it must be paid at the place specified. If the note does not specify any place of payment at all, it is payable at the residence or place of business of the maker, or wherever he may be found. The holder of the note, when no place of payment is specified, may present it for payment at either the maker's residence, his place of business, or wherever he is found, at his option.

Civil Code, Section 3100.

Section 755.—DATE OF NOTE.—The date of a note need not necessarily be at the beginning. The date may be placed upon any part of the paper, at the top, or at the bottom, or anywhere else on its face, and it will be sufficient. It is not necessary to insert the true date of its signing. Any date may legally be inserted by the maker, whether past, present, or future, and the note will still be valid and binding. In any dispute in court the holder or the maker will be allowed to show the actual time when the note was executed or delivered, or when it was intended by the parties to take effect.

Civil Code, Section 3094.

Section 756.—NOTE NOT DATED IS VALID.—A note is valid although not dated at all. If it bears no date, it will be considered as dated at the time it was executed. And if the holder of a note which bears no date at all sues to collect it, he will be allowed to show by verbal testimony when the note was actually signed, or when it was intended by the parties to take effect.

Civil Code, Section 3091.

Section 757.—HOW MUST BE SIGNED BY MAKER.—The name of the maker may be affixed to any portion of the note, and it will be good. It may be at the beginning, or in the middle, or signed at the end. For instance, if a note begins, "I, John Smith, promise to pay," etc., and

is not other subscribed at all, it will be a valid note, because the intention to bind the maker is apparent. The maker's name may be signed in pencil. If the maker cannot write, his signature may be by an X, or mark, his name being written near the mark by another person, who writes his own name as a witness.

Civil Code, Section 14.

Section 758.—FORM OF NOTE SIGNED WITH AN X.—The following is a good form of note signed with an X, or mark, by a person who cannot write:

....., Cal., ....., 19.....  
 .....after date, for value received, I promise  
 to pay....., or order, at.....,  
 California, the sum of.....Dollars, Gold  
 Coin of the United States, with interest thereon in like  
 Gold Coin at the rate of.....per cent per annum from  
 date until paid. Interest payable semi-annually, and if  
 not so paid to be added to the principal and bear interest  
 at the same rate until paid.

his  
 SAMUEL X GREEN.  
 mark.

GEORGE JONES,

Witness to signature of Samuel Green.

Section 759.—MAKER'S NAME SPELLED WRONG.—It will make no difference in the validity of a note that the name of the maker is misspelled in his signature. The note is good if it can be determined, by the face of the note, or the indorsement on its back, who the maker is.

Section 760.—NAME OF PERSON TO WHOM NOTE IS PAYABLE.—The payee need not be named in person, if some one be indicated. Therefore it is sufficient if the note is made payable "to John Smith, or bearer," or "to the holder," or "to order," for this must be intended to mean whoever comes into lawful possession of it.

**Section 761.—NOTE PAYABLE ON OR BEFORE A CERTAIN DATE.**—A note may be made payable on or before a certain date, and this will give the maker the right to pay the note at any time before the date named, at his option. But the holder cannot compel the maker to pay the note until the date named in it. Thus, if a note is made payable “on or before one year after date,” the maker has a right, if he chooses, to pay the note at any time during the year; but the holder cannot compel him to pay until the year’s time has expired.

**Section 762.—FORM OF NOTE PAYABLE ON OR BEFORE A CERTAIN DATE.**—A good form of note, giving the maker the option of paying at any time before the date named, is as follows:

\_\_\_\_\_, Cal., \_\_\_\_\_, 19\_\_\_\_  
On or before one year after date, for value received, I  
promise to pay \_\_\_\_\_, or order, at \_\_\_\_\_,  
California, the sum of \_\_\_\_\_ Dollars, Gold  
Coin of the United States, with interest thereon in like  
Gold Coin at the rate of \_\_\_\_\_ per cent per annum from  
date until paid. Interest payable semi-annually, and if  
not so paid to be added to the principal and bear interest  
at the same rate until paid.

\_\_\_\_\_

**Section 763.—NOTE WITH PAYEE BLANK.**—A note may be made with the payee blank, that is, with a blank space for the payee’s name to be inserted, and it will be payable to bearer. It passes by delivery, and any bona fide holder for value may fill it up with his own name and sue upon it.

**Section 764.—NOTE PAYABLE TO ORDER OF MAKER.**—A note may be made payable to the order of the maker. For instance, the note may call for payment “to the order of myself,” and be indorsed by the maker to another person. The holder will take a valid note by such indorsement, and the maker will be bound.

**Section 765.—WHEN NOTE IN NEGOTIABLE.**—In order for a note to be negotiable, it must be made payable to “order,” or to “bearer.” Without these words, the note is not negotiable. By a negotiable note is meant an instrument which passes from one person to another by indorsement and delivery, and which, if transferred before it is due, entitles the holder to collect the full amount which its face calls for. But there must be something on the face of the note to indicate the intention of the parties that it shall be transferable by indorsement, negotiable; and commercial custom and the law of California provide that such intention must be made manifest on the face of the note, by the use of the word “order” or “bearer.”

Civil Code, Section 3087.

**Section 766.—WHEN NOTE IS NOT NEGOTIABLE.**—A note which is merely made payable to a certain person, and not to “order,” or not to “bearer,” is not negotiable. But, besides the omission of these words of negotiability, there are other things which destroy the negotiable character of a note. Thus, if a note is made payable out of a certain specified fund, it is not negotiable.

**Section 767.—DIFFERENCE BETWEEN NEGOTIABLE NOTE AND NOTE NOT NEGOTIABLE.**—In the law of California, as applied to common business affairs, the essential difference between the two kinds of notes, a note which is negotiable and a note which is not negotiable, will be found to be this: A negotiable note passes from one to another by delivery and indorsement, and may pass through an indefinite number of hands, and so long as it is indorsed for value, before becoming due, the holder acquires an absolute claim against the maker. The note, by being made payable to order, or to bearer, being negotiable, is a circulating credit, and it makes no difference to the holder that the maker of the note and the payee named in it may have had other dealings between themselves, on account



of which the payee may have become indebted to the maker; and in a suit upon a negotiable note, which has been indorsed for value to a third person, the maker cannot set up against the note anything which the payee owes him. The maker of a negotiable note, indorsed by the payee for value to another, must pay the whole note. But a note which is not negotiable stands upon a different footing. It may pass from the payee to whom it was made, for it may be assigned by the original holder to another. But the assignee of a non-negotiable note takes it subject to all set offs which the maker may have against the original holder. Let us suppose that Jones makes his note to Smith for \$500, and the note is not negotiable, and Smith assigns it to Green, but at that time Smith has become indebted to Jones upon another contract, in the amount of \$250; when Green sues to collect the note, Jones can set off against the \$500 note the \$250 which Smith owed him. It will make no difference that Green paid Smith the full \$500 called for by the note; the note was not negotiable, and he was bound to take it, if he chose to take it at all, subject to any defense which the maker might have acquired against his assignor.

Civil Code, Section 1459.

Section 768.—JOINT NOTE.—Two or more persons may make a note, and become jointly liable to pay it. That is, the intention may be expressed by two or more makers of a note that they will take upon themselves the mutual and joint obligation of paying the sum of money specified in it.

Civil Code, Section 1430.

Section 769.—FORM OF JOINT NOTE.—A joint note may be made in the following form:

....., Cal., .....; 19.....  
.....after date, for value received, we promise to pay to....., or order, the sum of  
.....Dollars, Gold Coin of the United

States, with interest thereon in like Gold Coin at the rate of.....per cent per annum from date until paid. Interest payable semi-annually, and if not so paid to be added to the principal and bear interest at the same rate until paid.

.....

.....

Section 770.—LIABILITY ON JOINT NOTE.—The makers of a joint note are all liable together, each for his proportionate share, and must all be sued together. But one of the makers of a joint note, who satisfies more than his share of the claim against all, may compel all the parties joined with him to contribute their proportion of the amount so paid by him.

Civil Code, Section 1432.

Section 771.—JOINT AND SEVERAL NOTE.—Several persons may make a note so as to become jointly and severally liable to pay it; such a note expressing the intention, that the holder may have the right to call upon all or any one or more of the makers for payment of the note, at his option.

Civil Code, Section 1430.

Section 772.—FORM OF JOINT AND SEVERAL NOTE.—A joint and several note may be made in the following form:

....., Cal., ....., 19.....  
 .....after date, for value received, we or  
 either of us promise to pay....., or  
 order, at....., California, the sum of.....  
 .....Dollars, Gold Coin of the United States, with  
 interest thereon in like Gold Coin at the rate of.....per  
 cent per annum from date until paid. Interest payable  
 semi-annually, and if not so paid to be added to the prin-  
 cipal and bear interest at the same rate until paid.

.....

.....

Section 774, page 613, and Sections 838, 840, page 647, "Business Law for Business Men."—INTEREST—The law of California about interest has been changed. The law now is, that the rate of interest upon the loan or forbearance of any money, goods or things in action, or on accounts after demand or judgments rendered in any court of this state, shall be seven dollars upon the one hundred dollars for one year and at that rate for a greater or less sum or for a longer or a shorter time; but it shall be competent for parties to contract for the payment and receipt of a rate of interest not exceeding twelve dollars on the one hundred dollars for one year, and not exceeding that rate for a greater or less sum or for a longer or shorter time, in which case such rate exceeding seven dollars on one hundred dollars shall be clearly expressed in writing.

Compound interest can only be charged when there is an express agreement in writing to that effect.

Every person, company, association or corporation, who for any loan or forbearance of money, goods or things in action shall have paid or delivered any greater sum or value than is allowed to be received, may either in person or his or its personal representative, recover in an action at law against the person, company, association or corporation who shall have taken or received the same, or his or its personal representative, treble the amount of the money so paid or value delivered in violation of said sections, providing such action shall be brought within one year after such payment or delivery.

No more than five per cent on sums less than \$1,000, or three per cent on sums over \$1,000, can be charged for commissions, where the loan procured is secured by mortgage, trust deed, bill of sale, assignment, pledge, or other evidence of debt. No commission can be charged where the loan procured is for a shorter period than six months and is not secured by a mortgage or pledge upon real estate.

Violation of the law is a misdemeanor, and shall be punished for the first offense by a fine of not less than twenty-five dollars nor more than three hundred dollars, or by imprisonment not more than six months, or by both such fine and imprisonment, and for each subsequent offense and conviction shall be punished by a fine not less than one hundred dollars nor more than five hundred dollars, and by imprisonment not less than six months nor more than one year. The penalties shall apply to and be imposed upon each member of any unincorporated company, association, or of any co-partnership, and upon each officer and director of a corporation who shall violate the law.





Section 773.—LIABILITY OF MAKERS OF JOINT AND SEVERAL NOTE.—The makers of a joint and several note are liable in a twofold capacity. All are liable together, each for his proportionate share of the sum specified in the note, and each one of the makers is severally liable, standing alone. The holder of the note may sue all of the makers together, and recover a judgment against all, or he may, at his option, sue any one of the makers alone, and compel him to pay the whole note. If one of the makers is compelled to pay the whole note, he, in turn, may compel the others to pay him their proportionate share for which they became liable on the note. With this, however, the holder has nothing to do. He has the right to single out any one or more of the signers of a joint and several note, and collect from him or them, or he may collect from all.

Section 774.—INTEREST.—The California law of interest does not recognize usury, and any rate may be charged which the parties agree upon. In many states of the Union the law limits the rate of interest which can be charged to a certain per cent per annum, ranging in amount from 5 to 12 per cent; but in California the conditions of settlement and early business dealings always were such as to encourage inflation and speculation, and consequent high rates of interest, and the Legislature has several times refused to enact a law against usury. Therefore the law now is that the parties to a promissory note may agree upon any rate of interest, and the note will be valid.

Section 775.—LEGAL RATE OF INTEREST.—The legal rate of interest in California, that is, the rate allowed by law when the note does not say anything about interest, is seven per cent per annum. Therefore, if a note is made which does not say anything at all about interest, and suit is brought to collect it, the judgment against the maker will bear interest at the rate of seven per cent per

annum. This interest will commence at the date when the note became due.

Section 776.—ATTORNEY FEES.—A note may be made providing that, in the event of the holder commencing suit to collect it, the maker will pay an attorney fee to the payee. Such a note is negotiable. The session of the Legislature of 1905 adopted an amendment to the Civil Code, providing that a negotiable note may provide for the payment of attorney's fees and costs of suit, in case suit be brought to collect the note, and the note will still be negotiable.

Civil Code, Section 3088.

Section 777.—WHEN NOTE IS OUTLAWED.—In California a note is outlawed if it is allowed to run more than four years after it becomes due. For instance, if a note is made payable one year after date, it will not outlaw for five years; the holder may commence a suit on the note after the expiration of the one year; but he may wait, and commence the suit at any time within four years after the note by its terms becomes due. The same rule of course applies to a note made payable at any other term. The note remains good for four years after it is due. After four years from the date when the note becomes due, in a suit upon the note, the maker or other person liable to pay it can set up a defense that it is outlawed. And if in fact the holder has waited more than four years after the note has become due, before commencing a suit upon it, the note will be outlawed, and cannot be collected if such defense is made.

Code of Civil Procedure, Section 337.

Section 778.—APPARENT MATURITY OF NOTE.—The apparent maturity of a promissory note, payable at sight or demand, is as follows: If it bears interest, one year after its date; or, if it does not bear interest, six months

after its date. Therefore, if an interest-bearing note is made, reading, "For value received I promise to pay," etc., it matures one year after its date. If the holder presents the note for payment within one year from its date, he has four years from the time when he demands payment in which to sue upon the note. If he does not demand payment until after one year from its date, the four years will not begin at the time when he demands payment, but will begin one year after the date of the note. Where a promissory note is payable at a certain time after sight or demand, such time is to be added to the periods mentioned.

What has been said above applies only to promissory notes in which the time of maturity does not appear upon the face of the note, that is, where the time when the note becomes due is not stated.

Civil Code, Sections 3135, 3136.

Section 779.—WHEN OUTLAWED NOTE IS RENEWED.—A note is renewed by the promise of the maker to pay the sum due. But the promise must be in writing, in all cases, or the note will not be renewed. There must be a written acknowledgment of the debt and unconditional promise to pay it, in order to revive it, after a note is outlawed. The acknowledgment and promise are not required to be in any particular form. It may be indorsed on the note; it may be by letters written by the maker to the creditor; or it may be by writing, in the form of a contract, to revive and keep alive the note. But in whatever form the writing is, whether by indorsement, or letter, or formal contract, the written promise must be signed by the debtor and made to the creditor. If the maker of the note admits, after it is outlawed, to a third person that he owes the money, the note will still remain outlawed. The law is that the acknowledgment of an outlawed debt and the new promise to pay it, must be made to the creditor himself, and must be in writing, signed by the debtor. The payment of interest will not revive an

outlawed note, unless such payment is accompanied by a written acknowledgment of the principal debt and a promise to pay it. A part payment of the amount of a note, after it has become outlawed, will not revive the whole debt without a written acknowledgment. A letter from the maker of the note to the creditor, after it is outlawed, expressing a desire to pay it, will revive the debt and create a new promise to pay. The holder of the note may then sue to collect the amount due, at any time within four years after the new promise was made. The effect of the new promise to pay is to extend the obligation of the debtor four years longer. If one only of several joint makers of a note, after it is outlawed, signs a written acknowledgment and promise to pay the debt, he binds himself alone. He cannot bind anybody but himself, and if the creditor wants the obligation extended as to all the joint makers of the note, he must get the signatures of all.

Code of Civil Procedure, Section 360.

Section 780.—INDORSEMENT OF NEGOTIABLE NOTE.—A negotiable note, if payable "to order," passes from one person to another by indorsement. This indorsement must be in writing. One who agrees to indorse a negotiable note is bound to write his signature upon the back of the note, if there is sufficient space on the back for that purpose. But it sometimes happens that the holder of a note has written on the back acknowledgments of money paid, or that many previous indorsers have signed their names, and in this manner the entire back of the note is covered, and there is no more room for any further writing upon it. The law of California provides, that when this happens, the holder may pin or paste on a piece of paper sufficient for his own or subsequent indorsements. Such addition to the original note thus becomes incorporated as a part of it. A note with the name of the holder written by him on the back, or, if there is no room on the back, on a piece of paper pinned or pasted to the



note, passes the legal title in the debt to the person to whom the note is delivered.

Civil Code, Sections 3108, 3109, 3110.

Section 781.—INDORSEMENT OF NON-NEGOTIABLE NOTE. One who writes his name upon the back of a non-negotiable promissory note, to give it credit, is a guarantor, and is liable *prima facie* for the payment of the note upon default of the maker.

Where a corporation has received the money obtained on a promissory note, upon which its name appears as an indorser, it cannot thereafter question the authority of its officers to make such indorsement. (Decided by the California District Court of Appeals, in the case of *Tilden vs. Goldy Machine Co.*, which decision is printed in *California Appellate Decisions*, Volume 7, page 323.)

Section 782.—INDORSEMENT OF ENTIRE INSTRUMENT.—The indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsee severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue.

Section 783.—KINDS OF INDORSEMENT.—An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional.

A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery.

The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

(a) *Indorsement Restrictive*.—An indorsement is restrictive, which either—

(1) Prohibits the further negotiation of the instrument; or

(2) Constitutes the indorsee the agent of the indorser; or

(3) Vests the title in the indorsee in trust for or to the use of some other person.

But the mere absence of words implying power to negotiate does not make an indorsement restrictive.

A restrictive indorsement confers upon the indorsee the right—

(1) To receive payment of the instrument;

(2) To bring any action thereon that the indorser could bring;

(3) To transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so.

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.

(b) *Qualified Indorsement*.—A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse," or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.

(c) *Conditional Indorsement*.—Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated, will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally.

(d) *Payable to Bearer*.—Where an instrument, payable to bearer, is indorsed specially it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as made title through his indorsement.

(e) *Payable to Two or More Persons*.—Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.

(f) *Indorsed to Person as "Cashier."*—Where an instrument is drawn or indorsed to a person as "cashier" or other fiscal officer of a bank or corporation, it is deemed prima facie to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer.

(g) *Name Misspelled*.—Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he think fit, his proper signature.

(h) *In Representative Capacity*.—Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability.

(i) *Time of Indorsement*.—Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue.

(j) *Place of Indorsement*.—Except where the contrary appears, every indorsement is presumed prima facie to have been made at the place where the instrument is dated.

(k) *Continuation*.—An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.

(l) *Striking Out Indorsement*.—The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument.

(m) *Transfer Without Indorsement*.—Where the holder of an instrument payable to his order transfers it

for value without indorsing it, the transfer vests in the transferee such title as the transferor had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferor. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made.

(n) *Prior Party May Negotiate*.—Where an instrument is negotiated back to a prior party such party may, subject to the provisions of this title, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable.

Act of the Legislature, approved June 1, 1917;  
in effect July 31, 1917.

Section 784.—ASSIGNMENT OF NON-NEGOTIABLE NOTE.—The difference between a note which is negotiable, and a note which is not negotiable, has been explained. A note which is not negotiable, for any reason, may nevertheless be transferred, by assignment. There is no particular form of assignment. The following words written on the back of a non-negotiable note are sufficient to assign the note from the holder to another person:

“I hereby assign the within note to John Smith.

“James Green.”

It has also been held by the courts that a non-negotiable note may be legally assigned by the mere endorsement of the name of the holder and a delivery of the note to another person.

Section 785.—LIABILITY OF INDORSERS.—Every indorser of a negotiable note, unless his indorsement is qualified in some way, by his indorsement warrants to every subsequent holder thereof that the note is in all respects what it purports to be; that he has a good title to it; that the signatures of all prior parties are genuine; and that if the note is dishonored the indorser, upon



notice of the dishonor being given him, will pay the amount due on the note, with interest, to the indorsee or other holder. Any number of indorsements may be made of a promissory note, and the last indorsee may look to all of the indorsers for his money, and he will have the same rights against every one of the indorsers as he has against the particular holder who indorsed the note to him. Sometimes a note, which has been indorsed by a prior indorser, comes back again to him by re-indorsement in the course of business, when he will thereby become reinstated in his original rights in the note; but he will have no claim upon any of the indorsers whose names appear on the note subsequent to his own. The indorsement of a note amounts to a contract on the part of the indorser, unless he qualifies his indorsement, that he will pay the indorsee, or other holder, the amount due, upon receiving notice of the dishonor of the note.

Civil Code, Sections 3116, 3120.

Section 786.—INDORSEMENT “WITHOUT RECOURSE.”—An indorsement may be so qualified that the liability of the indorser will be greatly limited. Thus, if the indorser writes his name on the back of the note, and adds the words, “without recourse,” he thus notifies the person to whom he transfers the note that he will not be responsible as an indorser, and cannot be held liable in case the maker does not pay. But there are circumstances under which the indorser “without recourse” will nevertheless be liable. By the act of transferring and delivering the note to another, although indorsed “without recourse,” the indorser impliedly warrants that the note is valid, that the signatures of prior parties whose names appear thereon are genuine, that the note has not been paid, and that he himself has practiced no fraud in the transfer.

Section 787.—RIGHTS OF INDORSEE IN DUE COURSE OF BUSINESS.—An indorsee in due course of business, who acquires for value a promissory note duly indorsed,

before its apparent maturity, and without knowledge of its actual dishonor, gets an absolute title to the note. It is thereafter valid in his hands, notwithstanding any defect in the title of the person from whom he acquired it. It has been said that the law of California cuts off all defenses on the part of the maker of a note, as against a holder in due course of business.

Civil Code, Sections 3123, 3124.

Section 788.—WHEN NOTE MUST BE PRESENTED FOR PAYMENT.—Many vexatious questions constantly arise about the presentation of a note for payment, and these usually refer to the indorsers. The maker is bound whether the note is presented to him or not, for he agrees to pay it at all events. But the indorser occupies a different position. He agrees to pay if the note is dishonored. The indorser is only a surety. So, before the indorser can be called upon for the money, the holder, whoever he is, must try to collect the money from the maker of the note. The Legislature of California has prescribed by law when a note must be presented for payment. The law provides, that a note payable on demand may be presented to the maker for payment upon any day; but a note made payable at a certain specified time must be presented for payment upon the day it is due. It must be presented within reasonable hours; and if it be payable at a bank, within the usual banking hours of the vicinity, unless the person to whom it should be presented consents to its being presented at any hour of the day. What are reasonable hours, within which the note must be presented, will depend upon circumstances. If the maker has a place of business, it must be presented within the usual business hours of the place or town; if presented at the maker's residence, it may be presented during the whole day until the hours of rest in the evening.

Civil Code, Section 3131.

Section 789.—BY WHOM NOTE MUST BE PRESENTED FOR PAYMENT.—The holder of the note must present it to the maker. By this is not meant that the holder should go in person and present the note. He may go in person, or he may send his agent or attorney. If the holder is dead, at the time the note is due, then the executor or administrator of his estate can present the note and demand payment.

Section 790.—TO WHOM NOTE MUST BE PRESENTED FOR PAYMENT.—The note must be presented to the maker, if he can be found at the place where presentment should be made. If the maker cannot be found there, then it is lawful to present the note to his agent in charge of his place of business or other place specified in the note as the place of payment. It may be presented to a clerk of the maker at his place of business; or to one partner of a firm, if a firm note; or to the administrator or executor of a deceased maker; or to an employee of the maker at the place where the note is to be presented, if one can be found there, and the maker cannot be found.

Section 791.—AT WHAT PLACE NOTE MUST BE PRESENTED FOR PAYMENT.—A note which specifies a place for payment must be presented there. It is a common thing for notes to be made payable at a certain bank, and in such case it will not do to present the note anywhere else, and so as to any particular place of payment specified in a note. If a note does not name any particular place for its payment, then it must be presented at the place of residence or the place of business of the maker, or wherever he may be found. It is at the option of the holder, where no place is specified in the note, whether he will present it to the maker at his residence, or his place of business, or in the street, or at any other place which may appear convenient.

Section 792.—WHAT WILL EXCUSE PRESENTMENT FOR PAYMENT.—There are some circumstances which under

the law of California will excuse presentment for payment. If the maker of the note has no place of business, or if his place of business or residence cannot, with reasonable diligence, be ascertained, then presentment for payment is excused and the indorser is bound. If the maker moves away, after executing the note, and the holder makes diligent inquiry, and cannot learn his residence or place of business when the note becomes due, the failure to present the note to the maker for payment, under such circumstances, will not relieve the indorser from liability. This is upon the principle that the holder has done all he can do, has shown good faith and diligence, and there is no reason why the indorser should be allowed to take advantage of a circumstance over which the holder of the note had no control.

Section 793.—WHAT IS REASONABLE DILIGENCE.—Reasonable diligence is a question of circumstances. Inevitable accident or overwhelming calamity may prevent the holder of a note from presenting it for payment to the maker on the day it is due, yet if he does present it at the very earliest practicable time thereafter, it will be sufficient. For it may happen that the holder had the intention in good faith to present the note at the proper time, yet all intercourse is stopped between the places where the holder and the maker live, by freshets, or by violent storms, or earthquakes, or other unforeseen conditions of natural objects rendering travel or communication impossible; or the presence of some dread and contagious disease in one or the other neighborhood, such as the yellow fever, or cholera, or smallpox, renders commercial intercourse impossible; or a political revolution may exist in the place where the holder or the maker lives, and by a blockade, or a battle, prevent the holder from presenting the note on the day when it is due; or war may be going on between the country where the maker lives and the country where the holder resides. In all cases above supposed, if the note is presented within



a reasonable time after the prohibitive obstacle is removed, it will be held sufficient under the law.

Section 794.—WHEN A NOTE IS DISHONORED.—A note is dishonored when it is not paid, on presentment to the maker for that purpose; and it is also dishonored when it is not paid without presentment, when presentment is excused.

Civil Code, Section 3141.

Section 795.—NOTICE OF DISHONOR.—If the holder wishes to make the indorser pay the note, after vainly attempting to collect it from the maker, he must give the indorser notice of the dishonor of the note. He may give the notice in person, or through his agent. A Notary, attorney, or bank, or other agent for collection, may give the notice as the agent of the holder. If there are several indorsers on a note, and notice of dishonor is given by the holder to the last indorser, he in turn must give notice of the dishonor to the indorser immediately before him, otherwise he cannot reimburse himself for the amount he is compelled to pay the holder.

Civil Code, Section 3142.

Section 796.—HOW NOTICE OF DISHONOR MAY BE GIVEN. A notice of dishonor may be given by delivering it to the indorser, personally, at any place; or, by delivering it to some person of discretion, at the place of residence or business of the indorser, apparently acting for him; or, by getting the best information obtainable of the place of residence of the indorser, and depositing the notice in the mail directed to the indorser at that place, postage paid. In case of the death of the indorser, the notice must be given to his executor or administrator, or if there is no executor or administrator, then to any member of his family who resided with him at his death, or if he had no family, then it must be mailed to his last place of residence. A notice of dishonor sent to an indorser after

his death is nevertheless valid, if the person sending it was ignorant of his death, and could not by ordinary diligence have ascertained the fact.

Civil Code, Section 3144, 3145, 3146.

Section 797.—WHEN NOTICE OF DISHONOR MUST BE GIVEN.—If the notice of dishonor of a note is not given by mail, then it must be given either on the same day the maker fails to pay it, or on the next business day thereafter. When notice of dishonor is given by mail, it must be deposited in the post-office in time for the first mail which closes after noon of the first business day succeeding the dishonor, and which leaves the place where the note was dishonored for the place to which the notice should be sent. The holder has at least the whole forenoon of the first business day after the dishonor to send off the notice. One of several indorsers, who receives notice of dishonor from the holder of the note, has the same time to give notice to another indorser; that is, he must give notice to a prior indorser either on the same day he receives his notice from the holder, or on the next business day, unless he gives notice by mail, which must be in the same manner as the holder is required to give notice by mail.

Civil Code, Sections 3147, 3148, 3150.

Section 798.—FORM OF NOTICE OF DISHONOR.—No particular form of notice is necessary. It may be given in any form which describes the note with reasonable certainty, and substantially informs the party receiving it that the note has been dishonored. The following is a form of notice in writing, to be served on the indorser:

....., Cal., ....., 19.....

JOHN GREEN:—

Dear Sir: You are hereby notified that the certain note made and delivered by John Smith to Samuel Stokes, dated April 1st, 1911, for \$500, and interest at 8 per cent per annum, and indorsed April 1st, 1912, by

you, is now held by me; that on the day when said note was due I presented it for payment to the said John Smith and demanded payment, but he failed and refused to pay the same; and I hereby notify you that I will hold you for the amount due on said note.

JAMES BROWN.

Section 799.—WHEN NOTICE OF DISHONOR IS EXCUSED. Notice of the dishonor of a note is excused, when the holder cannot, with reasonable diligence, ascertain either the place of residence or business of the indorser to be charged; or, when there is no mail communication between the town of the holder and the town in which the place of residence or business of the party to be charged is situated; or, when the notice is waived by the party himself upon whom it was to be served. If, before or after a note becomes due, an indorser has received full security, or the maker has assigned all his estate to him as such security, presentment and notice to him are excused. Delay in giving notice of dishonor is also excused, when caused by circumstances which the holder could not have avoided by the exercise of reasonable care and diligence—as, by an epidemic, or riot, or war, or flood, or storm.

Civil Code, Sections 3156, 3157, 3158.

Section 800.—PROTEST OF FOREIGN NOTE.—What has been said of notice of dishonor applies only to a note made and payable in California. A note made in a foreign country, or in another State, and sent to this State for collection and dishonored, must be protested by a Notary Public.

Section 801.—WHEN SUIT TO COLLECT NOTE CAN BE BROUGHT.—In California a suit to collect a note can be brought at any time within four years after it is due, provided the note was made in this State. If the note was made out of the State, a suit can be brought in this

State to collect it at any time within two years after it is due.

Code of Civil Procedure, Sections 337, 338.

Section 802.—IN WHAT COURT SUIT TO COLLECT NOTE MUST BE BROUGHT.—In all cases where the sum sued for amounts to \$300, exclusive of interest, the suit must be brought in the Superior Court. In cases where the sum sued for, exclusive of interest, amounts to less than \$300, the suit must be brought in the Justice Court.

Code of Civil Procedure, Sections 76, 112.

Section 803.—INSTALLMENT NOTE.—A note is valid which provides for payment in stated installments. This note may also lawfully provide that upon default in the payment of any installment or of interest the whole sum shall immediately become due and payable.

Section 804.—FORM OF INSTALLMENT NOTE.—The following is a form of installment note:

....., California, ....., 19.....

For value received, I promise to pay.....  
or order, at....., California, the sum  
of..... Dollars, lawful money of the  
United States, with interest thereon in like lawful money  
at the rate of..... per cent per annum from date until  
paid. Said sum of..... Dollars to be  
paid by installments as follows, to-wit: The sum of  
..... Dollars on the..... day  
of....., 19....., and the remainder in.....  
equal monthly payments of..... Dollars on the  
first day of each and every month thereafter until the  
whole principal sum and the interest thereon shall have  
been paid. If default shall be made in the payment of  
any installment, as above provided, then the whole  
amount of this note and the interest thereon shall become  
immediately due and payable.

.....



Section 805.—AGENT'S NOTICE OF DISHONOR.—Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder. The agent may give the notice in his own name.

Act of the Legislature, approved June 1, 1917;  
in effect July 31, 1917.

Section 806.—TIME OF MATURITY.—Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due or becoming payable on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday.

Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment.

Act of the Legislature, approved June 1, 1917;  
in effect July 31, 1917.

Section 807.—NOTE PAYABLE AT A BANK IS AN ORDER TO THE BANK.—Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.

Act of the Legislature, approved June 1, 1917;  
in effect July 31, 1917.

Section 808.—INSTRUMENT UNDATED.—Where an instrument expressed to be payable at a fixed period after

date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date.

Section 809.—FILLING UP BLANKS.—Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery.

Act of the Legislature, approved June 1, 1917;  
in effect July 31, 1917.

Section 810.—CONDITIONAL DELIVERY.—Every Contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as

regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

Act of the Legislature, approved June 1, 1917;  
in effect July 31, 1917.

Section 811.—RULES OF CONSTRUCTION.—Where the language of the instrument is ambiguous or there are omissions therein, the following rules of construction apply:

(1) Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount;

(2) Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof;

(3) Where the instrument is not dated, it will be considered to be dated as of the time it was issued;

(4) Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail;

(5) Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election;

(6) Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser;

(7) Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon.

Act of the Legislature, approved June 1, 1917;  
in effect July 31, 1917.

Section 812.—TRADE OR ASSUMED NAME.—One who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name.

Section 813.—SIGNATURE BY AGENT.—The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency.

Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability.

Act of the Legislature, approved June 1, 1917;  
in effect July 1, 1917.

Section 814.—PROCURATION.—A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.

Section 815.—INDORSEMENT BY CORPORATION OR INFANT.—The indorsement or assignment of the instrument



by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon.

## MORTGAGES

Section 816.—**MORTGAGE SECURITY.**—The ordinary security for the payment of a promissory note is a mortgage of either personal or real property. By a mortgage the debtor secures his creditor without the necessity of changing the possession of the property.

Section 817.—**WHAT INTEREST IN REAL PROPERTY MAY BE MORTGAGED.**—Any interest in real property which is capable of being transferred may be mortgaged. Interest in real property covering the absolute title in fee simple may, of course, be mortgaged. But the right to mortgage does not stop here. The interest of an heir or devisee under a will, being a vested right, may be mortgaged. One in possession of the land under a verbal agreement to purchase may mortgage the interest that he has. Any interest in the reversion of lands, or any interest in lands which will surely come to a person upon the happening of some event, may be mortgaged.

Civil Code, Section 2947.

Section 818.—**WHAT PERSONAL PROPERTY MAY BE MORTGAGED.**—Mortgages may be made upon all growing crops, including grapes and fruit, and upon any and all kinds of personal property, except the following:

1. Personal property not capable of manual delivery;
2. Articles of wearing apparel and personal adornment;
3. The stock in trade of a merchant.

Act of the Legislature, approved February 20, 1909.

Section 819.—**HOW MORTGAGE IS EXECUTED AND ACKNOWLEDGED.**—A mortgage must be in writing, and

signed by the mortgagor. It should be recorded, and therefore must be acknowledged before an officer authorized to administer oaths. It is usual in California to have a mortgage acknowledged before a Notary Public, but an acknowledgment before a Justice of the Peace, or County Clerk, or County Recorder, is equally good. If the person executing the mortgage cannot write, he may sign the mortgage by an X or mark, with two witnesses to his signature.

Section 820.—MORTGAGE OF MARRIED WOMAN.—A married woman may mortgage her own property, without the consent of her husband, and without his joining her in the mortgage in any way. A married woman's acknowledgment to a mortgage is made in the same manner as that of any other person.

Section 821.—MORTGAGE OF MINOR.—A minor in California cannot under the age of 18 make a contract relating to real property. Over the age of 18 he may execute a mortgage of his real property, but it is voidable at his election when he comes of age. He may mortgage his personal property, whether under or over 18 years of age, provided the property is in his own possession or control; but this mortgage is also subject to be disaffirmed by him when he comes of age.

Section 822.—MORTGAGE OF PARTNERSHIP PROPERTY.—Partners may make a mortgage of partnership property, but they must sign their own names. Thus, if Samuel Jones and James Smith are partners, doing business under the firm name of Jones & Smith, their mortgage of partnership property should not be signed with the firm name, "Jones & Smith," but should be signed with their individual names, "Samuel Jones. James Smith."

Section 823.—RECORDING MORTGAGES.—The law of California provides for the acknowledgment and record-

Section 826, page 635—REMOVAL OF MORTGAGED PERSONAL PROPERTY—Every person who, during the existence of the mortgage, with intent to defraud the mortgagee, his representatives or assigns, takes, drives, carries away, or otherwise removes or permits the taking, driving, or carrying away, or other removal of the mortgaged property, or any part thereof, from the county where it was situate when mortgaged, without the written consent of the mortgagee, or who sells, transfers, or in any manner further encumbers the said mortgaged property, or any part thereof, or causes the same to be sold, transferred, or further encumbered, is guilty of larceny, and is punishable accordingly; unless at or before the time of making such sale, transfer or encumbrance, such mortgagor informs the person to whom such sale, transfer, or encumbrance is made, of the existence of the prior mortgage, and also informs the prior mortgagee of the intended sale, transfer, or encumbrance, in writing, by giving the name and place of residence of the party to whom the sale, transfer or encumbrance is to be made.

Act of the Legislature of California, approved May 13, 1921; in effect July 13, 1921.





ing of mortgages, real or personal. The mortgage is recorded in the office of the County Recorder of the county where the property is situated.

Section 824.—PROOF OF EXECUTION OF MORTGAGE.—It sometimes happens that a mortgage is made, but not acknowledged by the mortgagor; and the holder of the mortgage afterwards desires to record it. Not having been acknowledged when made, it is not entitled to be recorded. But the law provides that proof of the execution of the mortgage, when not acknowledged, may afterwards be made by either the mortgagor or the mortgagee. Proof is made by going before a Notary Public, or other officer authorized to take acknowledgments, who upon the evidence presented to him certifies to the fact of the execution of the mortgage. When there is a defect in the Notary's certificate, any party interested may sue in the Superior Court and obtain a judgment correcting the certificate.

Section 825.—EFFECT OF RECORDING MORTGAGES OF REAL PROPERTY.—The effect of recording a mortgage of real property is to give notice to the world of the encumbrance upon it, and to give the mortgage precedence over every other lien which subsequently attaches to the property. A recorded mortgage has precedence over one of earlier date which was not recorded, and of which the holder of the recorded mortgage had no notice. A recorded mortgage is good against an attachment or homestead subsequently put on the property, or any other lien subsequent to the mortgage.

Section 826.—EFFECT OF RECORDING A CHATTEL MORTGAGE.—A mortgage of personal property must be recorded in the office of the County Recorder of the county in which the mortgagor resides. But if the mortgagor resides in one county, and the property is situated in another county, then the mortgage must be recorded in both counties. If the property is removed to another

county by the mortgagor, the mortgagee must, within thirty days, cause the mortgage to be recorded in the county to which the property has been removed. If these provisions are complied with a chattel mortgage, properly executed, gives the same prior lien to the mortgagee of personal property which he would acquire under a recorded real estate mortgage. A certified copy of a mortgage of personal property once recorded may be recorded in any other county.

Civil Code, Sections 2959, 2964, 2965.

Section 827.—MORTGAGE NOT RECORDED GOOD BETWEEN PARTIES.—Even though a mortgage is not recorded, it is good between the parties to it, if the mortgage was executed and signed in the manner provided by law.

Section 828.—MORTGAGE ON HOMESTEAD.—A mortgage on a homestead is void unless it is signed and acknowledged by both husband and wife. A mortgage on community real estate must be signed by both husband and wife, whether the property is or is not a homestead. A mortgage made after a homestead has been filed, signed by the husband alone, is absolutely void. The homestead may be mortgaged, but it must be by the joint act of the husband and wife. They must both sign the mortgage at the time it is made, and they must both know that it covers the homestead property. So, if the husband signs a mortgage on the homestead, and his wife is induced to sign it also, but under the belief that the mortgage covers other property alone, it will not be good against the homestead. A mortgage of the homestead, to be valid, must be the united act of the husband and wife.

Civil Code, Section 1242.

Act of the Legislature, approved May 23, 1917;  
in effect July 27, 1917.

Section 829.—DECLARATION OF HOMESTEAD. — Sometimes a question will arise as to whether there is a legal

homestead on file, sufficient to protect the property against creditors. This question will be easily answered, by getting from the County Recorder a copy of the declaration of homestead. The law provides what must be stated in the declaration of homestead filed with the County Recorder, and from what property the homestead may be taken. If the claimant be married, the homestead may be selected from the community property, or the separate property of the husband, or, with the consent of the wife, from her separate property. When the claimant is not married, but is the head of a family, the homestead can be selected from any of his or her property. In order to select a homestead, the claimant must sign and acknowledge a declaration and file it for record in the office of the County Recorder. The declaration of homestead must contain: (1) A statement, showing that the person making it is the head of a family; or when the declaration is made by the wife, showing that her husband has not made such declaration, and that she therefore makes the declaration for their joint benefit; (2) a statement that the person making it is residing on the premises, and claims them as a homestead; (3) a description of the premises; (4) an estimate of their actual cash value.

Civil Code, Sections 1237, 1238, 1261, 1263.

Section 830.—FORM OF DECLARATION OF HOMESTEAD BY HUSBAND AND WIFE.—The following is a good form of Declaration of Homestead by husband and wife, which must be recorded in the office of the County Recorder of the county where the land is situated:—

DECLARATION OF HOMESTEAD:—Know all men by these presents, that we do hereby certify and declare that we are husband and wife, and that we do now at the time of making this declaration actually reside together on the land and premises herein described; that the land and premises on which we reside are situate, bounded, and described as follows, to-wit:

(Here insert description of land.)

That it is our intention to use and claim the said lot of land and premises above described, together with the dwelling house thereon, and its appurtenances, as a homestead, and we do hereby select and claim the same as a homestead; that we make this declaration for our joint benefit, and we declare that we have not heretofore made a declaration of homestead; that the actual cash value of said property we estimate to be \$.....

In witness whereof, we have hereto set our hands and seals this.....day of....., 19.....

.....(Seal.)

.....(Seal.)

STATE OF CALIFORNIA, }  
COUNTY OF..... } ss.

On this.....day of....., 19....., before me, a Notary Public in and for said County and State, personally appeared .....and..... personally known to me to be the persons described in and who executed the foregoing Declaration of Homestead, and they acknowledged to me that they executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, on this.....day of....., 19.....

Notary Public in and for the County of.....  
State of California.

Commission expires....., 19.....

Section 831.—FORM OF DECLARATION OF HOMESTEAD BY HUSBAND.—The following is a good form of Declaration of Homestead by the husband alone, and must be recorded in the office of the County Recorder of the county in which the land is situated:—

DECLARATION OF HOMESTEAD:—

Know all men by these presents, that I do hereby certify and declare, that I am the head of a family; that I



do now at the time of making this declaration actually reside with my family on the land and premises hereinafter described; that the land and premises on which I reside are situate, bounded, and described as follows, to-wit:

(Here insert description of land.)

That my wife's name is

That it is my intention to use and claim the said lot of land and premises above described, together with the dwelling house thereon, and its appurtenances, as a homestead, and I do hereby select and claim the same as a homestead; that I make this declaration for the joint benefit of myself and wife, and I declare that my wife has not made a declaration of homestead; that the actual cash value of said property I estimate to be \$.

In witness whereof, I have hereto set my hand and seal this day of, 19.

(Seal.)

STATE OF CALIFORNIA, }  
COUNTY OF } ss.

On this day of, 19, before me, a Notary Public in and for the said County and State, personally appeared, personally known to me to be the person described in and who executed the foregoing Declaration of Homestead, and he acknowledged to me that he executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, on this day of, 19.

Notary Public in and for the County of  
State of California.

Commission expires, 19.

Section 832.—FORM OF DECLARATION OF HOMESTEAD BY WIFE.—The following is a good form of Declaration of Homestead by the wife alone, and must be recorded in

the office of the County Recorder of the county in which the land is situated:—

**DECLARATION OF HOMESTEAD:—**

Know all men by these presents, that I do hereby certify and declare, that I do now at the time of making this declaration actually reside with my family on the land and premises hereinafter described; that the land and premises on which I reside are situate, bounded, and described as follows, to-wit:

.....  
(Here insert description of land.)  
.....

That my husband's name is.....

That it is my intention to use and claim the said lot of land and premises above described, together with the dwelling house thereon, and its appurtenances, as a homestead, and I do hereby select and claim the same as a homestead; that I make this declaration for the joint benefit of myself and husband and I declare that my husband has not made a declaration of homestead; that the actual cash value of said property I estimate to be \$.....

In witness whereof I have hereunto set my hand and seal this.....day of....., 19.....

..... (Seal.)

STATE OF CALIFORNIA, }  
COUNTY OF..... } ss.

On this.....day of....., 19....., before me, a Notary Public in and for the said County and State, personally appeared....., personally known to me to be the person described in and who executed the foregoing Declaration of Homestead, and she acknowledged to me that she executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, on this.....day of....., 19.....

.....  
Notary Public in and for the County of.....  
State of California.

Commission expires....., 19.....

**Section 833.—VALUE OF HOMESTEAD.**—The homestead of husband and wife must not exceed in value the sum of \$5,000. The value of the homestead selected by the head of a family other than the husband or wife must not exceed in value the sum of \$1,000. Besides the husband or wife, any other person may take a State homestead, as the head of a family, who has residing on the premises and is caring for and maintaining, his or her minor child, or minor grandchild, or the minor child of his or her deceased wife or husband, a minor brother or sister or the minor child of a deceased brother or sister, a father, mother, grandmother, or grandfather of a deceased husband or wife, or an unmarried sister.

Civil Code, Section 1261.

**Section 834.—FORM OF REAL ESTATE MORTGAGE.**—A good form of mortgage on real estate is as follows, the blank spaces to be filled in with the proper names, dates, amounts, and descriptions:—

This mortgage made the..... day of....., in the year 19....., by.....

Mortgagor..... to..... Mortgagee.....

Witnesseth .....

That the Mortgagor..... mortgages to the Mortgagee..... those certain lots, or tracts of land situated in..... County, State of California, particularly described as follows, to-wit:

(Here insert description of property.)

as security for the payment of a certain obligation in writing, of which the following is a copy:—

....., Cal., ....., 19.....

..... after date .....

for value received, ..... promise to pay....., or order, at.....

.....Dollars, with interest  
from.....at the rate  
of.....per cent per annum, payable semi-  
annually, principal and interest payable in United States  
Gold Coin. Interest if not paid when due, to be added to  
the principal and bear interest at the same rate until paid.

.....  
.....  
\$.....

But in case default be made in the payment of either  
the principal or any installment of interest provided for  
in said obligation when due, then the whole shall be due  
at the option of the holder of the said obligation, and  
action may be immediately commenced, without notice, to  
foreclose this mortgage.

And the plaintiff, in action to foreclose this mortgage  
shall, upon filing the complaint in foreclosure, be entitled  
to.....per cent on the amount due on said obliga-  
tion as counsel fees.

And the holder of said obligation may pay all taxes or  
other encumbrances now subsisting or hereafter to be laid  
upon said land, and may at his option keep fully insured  
against all risks by fire the buildings which are now and  
may be hereafter erected thereon, and such payment shall  
be allowed with interest thereon at the rate of one per  
cent per month.

And the cost of foreclosure and sale, counsel fees, and  
all payments herein provided for, are and shall be a  
charge upon the property described herein, and repayable  
on demand, and payable out of the proceeds of the sale  
thereof.

IN WITNESS WHEREOF, the said Mortgagor,  
....., has hereunto set.....hand.....  
and seal....., the day and year first above written.

.....(Seal.)  
.....(Seal.)  
.....(Seal.)



STATE OF CALIFORNIA, }  
 COUNTY OF \_\_\_\_\_ } ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, A. D. one thousand  
 nine hundred and \_\_\_\_\_, before me \_\_\_\_\_,  
 a Notary Public in and for said County and State, re-  
 siding therein, duly commissioned and sworn, personally  
 appeared \_\_\_\_\_

\_\_\_\_\_

known to me to be the person whose name is subscribed  
 to and who executed the within instrument, and he ac-  
 knowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and  
 affixed my official seal at my office in the \_\_\_\_\_  
 County of \_\_\_\_\_, the day and year in this  
 certificate first above written.

\_\_\_\_\_  
 Notary Public in and for the County of \_\_\_\_\_,  
 State of California.  
 Commission expires \_\_\_\_\_, 19\_\_\_\_\_.

Section 835.—RULES WHICH APPLY TO CHATTEL MORT-  
 GAGES.—The law provides how a mortgage of personal  
 property must be made, and because this kind of mort-  
 gage is on movable property, subject to transportation  
 from one place to another, the law makes certain strict  
 rules which must be applied to the making of every chattel  
 mortgage in this State. A mortgage of personal prop-  
 erty is void as against creditors of the mortgagor, unless  
 it is accompanied by the affidavit of all the parties thereto  
 that it is made in good faith and without any design to  
 hinder, delay, or defraud creditors; and a mortgage with-  
 out this affidavit is also void as against subsequent pur-  
 chasers and encumbrancers of the property who become  
 such in good faith and for value. The law also provides  
 that a mortgage of personal property, to be valid against  
 creditors of the mortgagor, or against subsequent pur-  
 chasers or encumbrancers in good faith and for value,

must be acknowledged, or proved, certified, and recorded in like manner as deeds of real property.

Civil Code, Section 2957.

The husband may mortgage the community personal property; provided the husband cannot mortgage the furniture, furnishings, or fittings of the home, or the clothing or wearing apparel of the wife or minor children, without the written consent of the wife.

Act of the Legislature, approved May 23, 1917;  
in effect July 27, 1917.

Section 836.—FORM OF CHATTEL MORTGAGE.—A good form of mortgage on personal property is as follows, the blank spaces to be filled in with the proper dates, names, amounts, and descriptions:—

THIS MORTGAGE made the.....day of....., in the year 19....., by....., by occupation a....., Mortgagor, to....., by occupation a....., Mortgagee.

WITNESSETH: That the Mortgagor mortgages to the Mortgagee all that certain personal property, with the increase thereof, situated in.....County, State of California, and more particularly described as follows, to-wit:—

(Here insert description of property.)

as security for the payment to the said Mortgagee of the sum of.....Dollars, Gold Coin of the United States, on the.....day of....., 19....., with interest thereon at the rate of.....per cent per annum, payable semi-annually, according to the terms and conditions of a certain promissory note of which the following is a copy:—

....., Cal., ....., 19.....  
 .....after date .....,  
 for value received, .....promise to pay.....  
 .....or order, at.....  
 .....Dollars, with interest  
 from....., at the rate of.....  
 per cent per annum, payable semi-annually, principal and  
 interest payable in United States Gold Coin. Interest, if  
 not paid when due, to be added to the principal and bear  
 interest at the same rate until paid.

\$.....

This mortgage is also made as security for all other sums now due or that may hereafter become due on account or otherwise from the mortgagor to the mortgagee. It is also agreed that in case the mortgagee should bring suit to foreclose this mortgage, upon filing the complaint he shall be allowed a reasonable attorney fee, the same to be secured by this mortgage.

It is also agreed that if the mortgagor shall fail to make any payment as in said promissory note or in this mortgage provided, or if the mortgagor shall sell the said property herein mortgaged without the written consent of the mortgagee, or remove the same from the County of....., or, if the mortgagee shall herein-after deem himself insecure, then in either of the above events the mortgagee may take possession of the said personal property, using all necessary force so to do, and immediately proceed to sell the same in the manner provided by law, and without foreclosure, and from the proceeds may pay the whole amount due the said mortgagee, as specified in said note and mortgage.

Signed and executed in the presence of

.....(Seal.)  
 .....(Seal.)  
 .....(Seal.)

STATE OF CALIFORNIA, }  
 COUNTY OF..... } ss.

....., the mortgagor..... in the foregoing mortgage named, and....., the mortgagee in said mortgage named, being duly sworn, each for himself doth depose and say that the aforesaid mortgage is made in good faith and without any design to hinder, delay, or defraud any creditor or creditors.

..... (Seal.)

..... (Seal.)

..... (Seal.)

Subscribed and sworn to before me this..... day of....., 19......

Notary Public in and for..... County, California.

STATE OF CALIFORNIA, }  
 COUNTY OF..... } ss.

On this..... day of....., 19....., before me, a Notary Public in and for the County of....., residing therein, duly commissioned and sworn, personally appeared....., known to me to be the person described in, whose name is subscribed to, and who executed the within instrument, and he acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the said County of....., the day and year in this certificate first above written.

Notary Public in and for the County of.....,  
 State of California.

Commission expires....., 19......

Section 837.—DEED AS SECURITY AND AGREEMENT TO DEED BACK.—When a deed of property is given as security for a note, and a written agreement is given to the maker that the property will be deeded back to him when the note is paid, the transaction constitutes a mortgage,



and nothing more. Many lawsuits have occurred, where the holder of such a deed has claimed to be the absolute owner of the property, but the courts have invariably held that it is nothing more than a mortgage, and that the holder must bring a foreclosure suit upon it, just the same as if it were a mortgage in the ordinary terms.

Section 838.—**LAWFUL INTEREST.**—There is no law against usury in California. A note may specify any rate of interest, and it will be allowed, according to the terms of the note, until the entry of judgment in a suit to collect the note.

Civil Code, Section 1918.

Section 839.—**LEGAL RATE WHERE NO INTEREST SPECIFIED.**—If a note does not specify any rate, interest is payable on it at the rate of seven per cent per annum after the money becomes due. Thus, if a note is made payable in sixty days, which does not specify any rate of interest, the legal rate of seven per cent is payable on it, beginning with the termination of the sixty days. If part of the note is paid in sixty days, no interest is payable except on so much of it as remains unpaid. In the computation of interest for a period less than a year, 360 days are deemed to constitute a year.

Civil Code, Section 1917.

Section 840.—**COMPOUND INTEREST.**—The maker of a note may lawfully agree, and may insert in the note, that if the interest is not punctually paid it shall become a part of the principal, and thereafter bear the same rate of interest as the principal debt.

Civil Code, Section 1919.

Section 841.—**INTEREST ON JUDGMENT.**—Interest is payable on judgments recovered in the courts of this State at the rate of seven per cent per annum, but such interest cannot be compounded in any manner.

Civil Code, Section 1920.

**Section 842.—WHO MUST PAY TAXES ON MORTGAGE.**—The mortgagee and mortgagor may make any agreement they please about the payment of the taxes, and it is lawful to provide in the mortgage that the mortgagor shall pay the taxes on the mortgage.

**Section 843.—INSURANCE ON MORTGAGED BUILDINGS.**—Either the mortgagor or mortgagee may keep the buildings on the land insured. A mortgage generally provides that the mortgagee may insure the buildings, and the mortgagor must repay the amount paid as premiums with interest.

**Section 844.—ATTORNEY FEES.**—There is no lien on mortgaged property for attorney fees, unless the mortgage expressly so provides.

**Section 845.—MORTGAGE FOR FUTURE ADVANCES.**—A mortgage may be made which will cover and secure not only a sum of money paid in hand, but also future advances of the mortgagee to the mortgagor. Such a mortgage is good, and avoids the necessity of a number of mortgages where money is advanced at different times to the same person.

**Section 846.—FIRST AND SECOND MORTGAGES.**—A mortgage properly executed and recorded takes precedence of other mortgages subsequently placed on the same property. If the property is sold under foreclosure, the first mortgage must be first paid.

**Section 847.—IN WHAT COURT SUIT MUST BE BROUGHT TO FORECLOSE MORTGAGE.**—A suit to foreclose a mortgage on personal property can be brought in either the Justice Court or the Superior Court, if neither the amount of the lien nor the value of the property is as much as \$300. If the mortgage lien is as much as \$300, or if the value of the property mortgaged is \$300 or over, the suit to

foreclose the mortgage must be brought in the Superior Court. All suits to foreclose mortgages on real property must be brought in the Superior Court.

Section 848.—WHEN MORTGAGE IS OUTLAWED.—A mortgage is outlawed four years after it becomes due. A suit to foreclose a mortgage must be commenced within four years after it is due, otherwise the suit cannot be maintained.

Code of Civil Procedure, Section 337.

Section 849.—RENEWAL OF NOTE DOES NOT RENEW MORTGAGE.—When a note secured by a mortgage becomes barred by the statute of limitations, the lien created by the latter is extinguished, and a subsequent renewal of the note, while creating the debt anew, does not revive or continue the mortgage. (Decided by the Supreme Court of California, in the case of Kern Valley Bank vs. Koehn, which decision is printed in Volume XXXIX of California Decisions, page 138.)

Section 850.—WHAT PROPERTY CAN BE SOLD TO SATISFY MORTGAGE.—Only so much of the mortgaged property can be sold as will bring enough to pay the debt and the costs and expenses of foreclosure. Therefore, neither real estate nor personal property will be sold in one lot, to satisfy a mortgage debt, if it appears that a sale of a part only will bring enough to pay the debt and costs and expenses.

Section 851.—ORDER IN WHICH PROPERTY MUST BE SOLD.—As a general rule, in the sale of mortgaged property under foreclosure, where the mortgage covers both real and personal property, the court in its decree of foreclosure will direct that the personal property be sold first. When the sale is of real property, consisting of several known lots or parcels, they must be sold sep-

arately. The judgment debtor, if present at the sale, may also direct the order in which property, real or personal, shall be sold, when such property consists of several known lots or parcels, or of articles which can be sold to advantage separately, and the Sheriff must follow such directions.

Code of Civil Procedure, Section 694.

Section 852.—COSTS OF FORECLOSURE.—The costs of foreclosure, including reasonable attorney fees, when provided for in the mortgage, are taxed to the mortgagor, and must be paid out of the proceeds of the sale of the mortgaged premises.

Section 853.—WHO MAY BUY AT FORECLOSURE SALE.—Any person may buy in the property at a foreclosure sale, except the officer making the sale, or his deputy. The mortgagee may buy in the property, if he will bid higher than other bidders, or if no one else appears to bid.

Section 854.—CERTIFICATE OF SALE.—The officer making the sale gives to the purchaser a certificate of sale, containing a particular description of the real property sold, the price bid for each distinct lot or parcel, the whole price paid, and when the property is subject to redemption the certificate must so state. And when the judgment under which the sale has been made is payable in a specified kind of money or currency, the certificate must specify the same as the money or currency in which redemption may be made. Besides giving to the purchaser the certificate of sale, a duplicate of such certificate must be filed by the officer in the office of the Recorder of the county. If the property sold is personal property, capable of manual delivery, the officer must actually deliver the property to the purchaser upon payment of the purchase price.

Code of Civil Procedure, Sections 698, 700.



Section 855.—ASSIGNMENT OF CERTIFICATE OF SALE.—The certificate of sale received by the purchaser can be sold and assigned by him, and such assignment passes his right and title. The assignment should be recorded, and a notice of the assignment should be served on the officer who made the sale.

Section 856.—WHAT PROPERTY CAN BE REDEEMED.—There is no redemption from sales of personal property. The purchaser acquires an absolute title to personal property. When a leasehold interest in real property is sold, and the lease has less than two years to run, there is no redemption from the sale. In all other cases the property is subject to redemption.

Code of Civil Procedure, Section 700.

Section 857.—TIME FOR REDEMPTION.—The property sold may be redeemed from the purchaser at any time within twelve months after the sale. The judgment debtor has the whole of the last day in which to redeem.

Code of Civil Procedure, Section 702.

Section 858.—WHO MAY REDEEM.—The persons who may redeem in this state are, the judgment debtor, or his successor in interest, in the whole or any part of the property; and a creditor having a lien by judgment or mortgage on the property sold, or on some share or part thereof, subsequent to the lien on which the property was sold.

Code of Civil Procedure, Section 701.

Section 859.—HOW TO REDEEM.—The law provides, that the judgment debtor, or other redemptioner, who wishes to redeem, must pay the purchaser the amount of his purchase, with one per cent per month thereon up to the time of redemption, together with the amount of any assessment or taxes which the purchaser may have paid on the property after purchase, and interest on such amount. The purchaser from whom redemption is made may also

be a creditor having a lien other than the judgment under which he purchased, and if this lien was prior to the lien of the person who seeks to redeem from him, he must be paid the amount of his lien, with interest, in addition to the amount of his purchase. When property has been once redeemed, it may be again redeemed by another person within sixty days after the last redemption, by paying the amount paid on the last redemption, with two per cent additional, and any assessment or taxes on the property which the last redemptioner may have paid, and interest, and other redemptioners may in like manner redeem again and again, by making similar payments. Written notice of redemption must be given to the officer making the sale and a duplicate filed with the Recorder of the county. No form of written notice is here given, for the reason that it is not safe for a redemptioner to attempt to fill out a blank notice and use it himself, without the services of a lawyer. Knowing his rights, the redemptioner should seek the services of a competent lawyer, to prepare and serve the necessary notice and make the proper tenders of money in a lawful manner.

Code of Civil Procedure, Sections 702, 703.

Section 860.—THE SHERIFF'S DEED.—If no redemption is made within twelve months after sale, the purchaser or his assignee is entitled to a Sheriff's deed. If redeemed, whenever sixty days have elapsed, and no other redemption has been made, and the time for redemption has expired, the last redemptioner or his assignee is entitled to a Sheriff's deed. But in all cases the judgment debtor has the entire period of twelve months from the date of the sale to redeem the property. If the debtor redeems, the effect of the sale is terminated, and he is restored to his estate.

Code of Civil Procedure, Section 703.

Section 861.—DEFICIENCY JUDGMENT.—If after the sale of mortgaged property the proceeds are insufficient

to pay the debt, and a balance still remains due, a judgment is docketed by the clerk of the court for such balance against the defendants personally liable for the debt. Such deficiency judgment then becomes a lien against the real estate of the judgment debtor.

Code of Civil Procedure, Section 726.

Section 862.—POSSESSION OF PROPERTY DURING FORECLOSURE PROCEEDINGS.—Generally the mortgagor remains in possession of the mortgaged property during foreclosure proceedings, and it is only under peculiar circumstances that the court will disturb his possession. Where it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or where it appears that the conditions of the mortgage have not been performed, and that the property is probably insufficient to discharge the mortgage debt, the Superior Court has the power to appoint a Receiver, into whose hands the property is placed while the suit is going on.

Act of the legislature approved May 3, 1919; in effect July 22, 1919.

Section 863.—POSSESSION OF REAL PROPERTY DURING TIME FOR REDEMPTION.—It has been shown that there is no redemption of personal property sold under foreclosure, but that a redemption of real property is allowed, and that the time within which redemption may be made is twelve months. During this period of twelve months allowed for redemption the mortgagor has the right to remain in possession of the mortgaged premises, and during this time he is entitled to use the same and take the proceeds thereof.

Section 864.—RIGHT TO RENTS AND PROFITS.—Where the mortgaged property is occupied by a tenant, the purchaser, from the time of the sale until redemption, is entitled to receive the rents or the value of the use and occupation of the property. Where a person other than the

judgment debtor redeems, he is entitled to receive the rents until another redemption takes place. But all rents or profits collected by the judgment creditor or by a purchaser must be credited upon and deducted from the redemption money to be paid.

Code of Civil Procedure, Section 707.

Section 865.—WHO MUST PAY FOR IMPROVEMENTS MADE DURING FORECLOSURE PROCEEDINGS.—Sometimes the mortgagee gets possession of the premises, either by consent or by force, and succeeds in retaining such possession during foreclosure proceedings. Then the question arises, Who is to pay for improvements to the property made by the mortgagee in possession? In California the law is, that where a mortgagee is in possession, and makes improvements without the consent of the mortgagor, he will not be allowed anything for them further than is proper to keep the premises in necessary repair; therefore, if a mortgagee in possession should build a new house on the land, or clear uncultivated land and put it into a state of cultivation, or make any other improvements not necessary to keep the premises in repair, he must stand the expense himself, and cannot recover from the mortgagor or any redemptioner the cost of such improvements. The reason for this rule is, that while unreasonable improvements may be of benefit to the estate, yet the mortgagee has no right to impose them upon the owner and thus increase the burden of redeeming.

Section 866.—HOW TO COLLECT A NOTE WHEN MAKER IS DEAD.—If the maker of a note dies before it becomes due, the holder may collect it from the maker's estate. A claim for the amount due on the note must be presented to the executor or administrator.

If the executor or administrator allows the claim, it is then presented to the Judge of the Probate Court for his allowance, and when allowed it is filed in the Clerk's office, and becomes an acknowledged debt of the estate,



which the executor or administrator will be bound to pay in the course of the administration of the estate. When a claim is rejected, either by the executor or administrator, or by the Judge of the court, the holder must bring suit against the executor or administrator within three months after service of written notice by the executor or administrator of its rejection, if it be then due, or within two months after it becomes due, otherwise the claim will be forever barred.

Act of the legislature approved May 3, 1919; in effect July 22, 1919.

Section 867.—**EXCUSE FOR NOT PRESENTING CLAIM IN TIME.**—When the claimant was out of the State during the publication of notice to creditors, and makes affidavit to the fact, and that he had no notice, this will be an excuse for not presenting his claim against an estate in time, and he will be allowed to present the claim to the executor or administrator at any time before a decree of distribution of the estate is entered.

Code of Civil Procedure, Section 1493.

Section 868.—**FORECLOSURE OF MORTGAGE WHEN THE MAKER IS DEAD.**—A mortgage may be foreclosed, even though the maker is dead, by a suit against the executor or administrator of his estate. But a claim against the estate must be presented to the executor or administrator if the mortgagee wishes to recover attorney fees. If he does not present his claim for the amount due, he may still foreclose his mortgage, but he cannot recover fees paid to his attorney unless he expressly waives all recourse against any other property of the estate except the property mortgaged.

Section 869.—**FORECLOSURE OF MORTGAGE PAYABLE IN INSTALLMENTS.**—If the debt for which the mortgage is held is not all due, as where a note is payable in installments, and foreclosure is had for failure to pay an install-

ment due, so soon as sufficient of the property has been sold to pay the amount due, with costs, the sale must cease; and afterwards, as often as more becomes due, for principal or interest, the court may, on motion, order more to be sold. But if the property cannot be sold in portions, without injury to the parties, the whole may be ordered to be sold in the first instance, and the entire debt and costs paid; but where this is done there will be a rebate of interest on installments not yet due.

Code of Civil Procedure, Section 728.

Section 870.—COLLECTION OF LOST OR DESTROYED NOTE. The amount due on a note may be collected, notwithstanding the note may have been lost or destroyed. If the note is lost or destroyed, then the holder must give a bond, executed by himself and two sufficient sureties, to indemnify the party paying the note against any lawful claim which any other person may make upon it.

Civil Code, Section 3137.

Section 871.—NOTE MADE BY PARTNERS.—A note may be made by partners for the debts of the firm, or in the usual course of business of the firm, for goods, or advancements, or as security for a loan to the firm. One partner may execute the note in the firm name, and all the partners will be bound by it, for each partner has an equal right, so far as third parties are concerned, to bind the firm by acts and conduct in the usual course of its business.

Section 872.—LIABILITY OF PARTNERS ON PARTNERSHIP NOTE.—Every general partner is liable to third persons for all the obligations of the partnership, jointly with his co-partners. Therefore, a promissory note, executed for the firm, makes each partner liable to pay the note. The partnership property may be taken for the payment of the debt, and the property of each partner may also be taken, if the property of the firm is not sufficient.

Section 873.—ASSIGNMENT OF MORTGAGE.—A mortgage may be assigned, and the assignee will then have the same rights as the original mortgagee. The assignment must be in writing, and must be signed and acknowledged by the person making the assignment. The following is a good form of assignment of mortgage, which must be acknowledged in the same manner as a mortgage is acknowledged :

### ASSIGNMENT OF MORTGAGE.

Know All Men by These Presents :—That \_\_\_\_\_ of the County of \_\_\_\_\_, State of California, the party of the first part, for and in consideration of the sum of \_\_\_\_\_ Dollars, Gold Coin of the United States of America, to him in hand paid by \_\_\_\_\_, of the County of \_\_\_\_\_, State of California, the party of the second part, the receipt whereof is hereby acknowledged, does by these presents, grant, bargain, sell, assign, transfer, and set over, unto the said party of the second part, a certain indenture of mortgage bearing date the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, made and executed by \_\_\_\_\_ to the said party of the first part, and recorded in the office of the County Recorder of the County of \_\_\_\_\_, State of California, in book \_\_\_\_\_ of mortgages, page \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ at \_\_\_\_\_ minutes past \_\_\_\_\_ o'clock \_\_\_\_\_ M.

Together with the promissory note therein described, and the money due and to grow due thereon, with the interest.

And the said party of the first part does hereby make, constitute, and appoint the said party of the second part his true and lawful attorney, irrevocable, in his name or otherwise, but at the proper costs and charges of the said party of the second part, to have, use, and take all lawful ways and means for the recovery of the said money and interest; and in case of payment to discharge the same as fully as the said party of the first part might or could do if these presents were not made.

In witness whereof the said party of the first part has hereunto set his hand and seal this.....day of.....19.....

.....(Seal.)  
(Acknowledgment in usual form.)

Section 874.—RELEASE AND SATISFACTION OF MORTGAGE. A mortgage may be released and satisfied, by an entry in the record book signed by the mortgagee; and a mortgage may also be satisfied and released by a written instrument, acknowledged in the same manner as a deed, and filed for record in the office where the mortgage itself is recorded.

Section 875 —FORM OF RELEASE OF MORTGAGE.—The following is a form of release of mortgage:

Know All Men by These Presents: That I,.....of the County of....., State of California, do hereby certify and declare that a certain mortgage bearing date the.....day of.....19....., made and executed by.....of said County, the party of the first part therein, to.....of said County, the party of the second part therein, and recorded in the office of the Recorder of the said County of....., State of California, in Book.....of Mortgages, on page....., on the.....day of.....19....., together with the debt thereby secured, is fully paid, satisfied, and discharged.

In witness whereof I have hereunto set my hand and seal, this.....day of.....19.....

.....(Seal.)  
(Must be acknowledged in the same form as a deed.)

Section 876.—POWER OF SALE IN MORTGAGE OR TRUST DEED.—See the subject, "Trust Deeds."

A. J. BLEDSOE, ATTORNEY-AT-LAW, Los Angeles, Cal.—Mortgage Foreclosures; Suits on Notes; reasonable fees;

MAKES A SPECIALTY OF THE LAW OF COMMON LAW COMPANIES.—The organization, first advice and direction, and



starting in business, of a Common Law Company in the State of California. A stockholder in a corporation in California, if he owns one-tenth of the stock, is liable for one-tenth of the corporation debts (and so as to other proportions of stock owned by him), whether his stock is all paid for or not. A partner in California is individually liable for all the debts of the firm if the debt cannot be paid out of the partnership property. A shareholder in a Common Law Company is not individually liable for any of the debts of the business, and the creditors must look to the property of the company alone. Common Law Companies are destined to take the place of the State corporations, to a great extent, in the business life of California. (See the subject, "Common Law Companies.") A uniform fee of \$250 will be charged for legal services in the organization of a Common Law Company. See the title page of this book for office address of A. J. Bledsoe.

## PART VII.

### ATTACHMENTS, JUDGMENTS, AND EXECUTIONS

#### ATTACHMENTS

Section 877.—ATTACHMENT OF DEBTOR'S PROPERTY.—A creditor, in a suit to collect a bill, account, or promissory note not secured by mortgage, can attach the property of his debtor. The court in which the suit is brought will issue the writ of attachment, to be placed in the hands of an officer for service, at the time the summons is issued in the suit, or at any time afterward before judgment is given. Always, the plaintiff in the suit must give bond, usually in the sum of two hundred dollars, when the suit is in the Superior Court, to the effect that if the defendant recover judgment the plaintiff will pay all costs that may be awarded to the defendant and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the bond. The bond must be signed by two or more sureties. Upon the filing of the bond the Clerk of the Superior Court, if the suit is in that court, or the Justice of the Peace, if the suit is before a Justice, will issue a writ of attachment. The bond in a Justice Court is usually in the sum of fifty dollars.

A writ to attach the property of the defendant must be issued by the Justice at the time of, or after issuing summons, in actions in which the sum claimed exclusive of interest exceeds ten dollars.

Code of Civil Procedure, Sections 538, 539, 867.

Section 878.—WHAT PROPERTY CAN BE ATTACHED.—Real estate belonging to the debtor, whether standing up-

Section 878, page 661, "Business Law for Business Men"—ATTACHMENT OF PROPERTY SOLD ON THE INSTALLMENT PLAN—Personal property in possession of the buyer under an executory agreement for its sale entered into after this section goes into effect may be taken under attachment or execution issued at the suit of a creditor of the buyer, notwithstanding any provision in the agreement for forfeiture in case of levy or change of possession.

The officer levying on such property must, within five days after being served with a verified written claim containing a detailed statement thereof, pay or tender to the seller full payment of all sums due or to accrue to him under the agreement, above setoffs, with interest to date of tender. If the tender is refused, the amount thereof must be deposited with the county treasurer, payable to the order of the seller. Until such payment or deposit is made, the property can not be sold under the levy.

Act of the Legislature of California, approved May 25, 1921; in effect July 25, 1921.





on the records of the county in his name or in the name of another; personal property of all kinds; corporation stocks or shares; money owing to the debtor by any person,—all these may be attached as security for the payment of the judgment which the creditor expects to obtain when he sues the debtor to collect the amount due from him.

Section 879.—WHAT PROPERTY IS EXEMPT FROM ATTACHMENT OR EXECUTION.—The law of California singles out certain property of the debtor, and says that it shall not be taken for a debt. This is done to protect the unfortunate and the improvident, and to secure to the family of the debtor provision at least for temporary wants. Therefore, the law states that certain property of the debtor shall be exempt, no matter how pressing his debts or how eager his creditors may be. An attachment cannot hold, nor can a sale on execution be had, of any of the following property, if the owner objects: (1)—Chairs, tables, desks and books, to the value of \$200, belonging to the judgment debtor. (2)—Necessary household, table, and kitchen furniture, belonging to the judgment debtor, including one sewing machine, stove, stovepipes, and furniture, wearing apparel, beds, bedding, and bedsteads, hanging pictures, oil paintings and drawings, drawn or painted by any member of the family, and family portraits and their necessary frames, provisions and fuel actually provided for individual or family use sufficient for three months, and three cows and their sucking calves, four hogs with their sucking pigs, and food for such cows and hogs for one month; also one piano, one shotgun, and one rifle. (3)—The farming utensils or implements of husbandry of the judgment debtor, not exceeding in value the sum of one thousand dollars; also, two oxen, or two horses, or two mules, and their harness, one cart or buggy and two wagons, and food for such oxen, horses, or mules for one month; also, all seed, grain, or vegetables actually provided, reserved, or on hand for the purpose of planting

or sowing at any time within the ensuing six months not exceeding in value the sum of two hundred dollars; 75 bee-hives; and one horse and vehicle belonging to any person who is maimed and crippled, if same is necessary in his business. (4)—The tools or implements of a mechanic or artisan, necessary to carry on his trade; the notarial seal, records, and office furniture of a Notary Public; the instruments and chest of a surgeon, physician, surveyor, or dentist, necessary to the exercise of his profession, with his professional library, and necessary office furniture; the professional libraries of attorneys, judges, ministers of the gospel, editors, school teachers, and music teachers, and their necessary office furniture, including one safe and one typewriter; the musical instruments of music teachers actually used by them in giving instructions; all the indexes, abstracts, books, papers, maps, and office furniture of a searcher of records, necessary to be used in his profession; the typewriters, or other mechanical contrivances employed for writing in type, actually used by the owner thereof for making his living; also one bicycle, when the same is used by its owner for the purpose of carrying on his regular business, or when the same is used for the purpose of transporting the owner to and from his place of business. (5)—The cabin or dwelling of a miner, not exceeding in value the sum of five hundred dollars; also his sluices, pipes, hose, windlass, derrick, cars, pumps, tools, implements and appliances, necessary for carrying on any mining operations, not exceeding in value the aggregate sum of five hundred dollars; and two horses, mules, or oxen, with their harness, and food for such horses, mules, or oxen for one month, when necessary to be used on any whim, windlass, derrick, car, pump, or hoisting gear; and also his mining claim, actually worked by him, not exceeding in value the sum of one thousand dollars. (6)—Two horses, two oxen, or two mules, and their harness, and one cart or wagon, one dray or truck, one coupe, one hack or carriage, for one or two horses, by the use of which a cart-

man, drayman, truckman, huckster, peddler, hackman, teamster, or other laborer habitually earns his living; and one horse, with vehicle and harness or other equipments, used by a physician, surgeon, constable, or minister of the gospel, in the legitimate practice of his profession or business; with food for such oxen, horses, or mules, for one month. (7)—One fishing boat and net, not exceeding the total value of five hundred dollars, the property of any fisherman, by the lawful use of which he earns his livelihood. (8)—Poultry not exceeding in value seventy-five dollars. (9)—The wages and earnings of all seamen, sea-going fishermen, and sealers, not exceeding three hundred dollars, regardless of where or when earned, and in addition to all other exemptions otherwise provided by any law. (10)—The earnings of the judgment debtor for his personal services rendered at any time within thirty days next preceding the levy of execution or attachment, when it appears by the debtor's affidavit or otherwise that such earnings are necessary for the use of his family, residing in this state, supported in whole or in part by his labor; but where debts are incurred by any such person, or his wife or family, for the common necessities of life, or have been incurred at a time when the debtor had no family residing in this State supported in whole or in part by his labor, the one-half of such earnings above mentioned is nevertheless subject to attachment or execution, to satisfy debts so incurred. (11)—The shares held by a member of an incorporated homestead association, not exceeding in value one thousand dollars, if the person holding the shares is not the owner of a homestead under the laws of this State. (12)—All the nautical instruments and wearing apparel of any master, officer, or seaman of any steamer or other vessel. (13)—All fire engines, hooks, and ladders, with the carts, trucks, and carriages, hose, buckets, implements, and apparatus thereunto appertaining, and all furniture and uniforms of any fire company or department organized under any law of this State. (14)—All arms, uniforms, and accoutrements required



by law to be kept by any person, and also one gun, to be selected by the debtor. (15)—All court houses, jails, public offices and buildings, lots, grounds, and personal property; the fixtures, furniture, books, papers, and appurtenances belonging and pertaining to jails and public offices of any county of this State; and all cemeteries, public squares, parks, and places, public buildings, town halls, markets, buildings for the use of fire departments and military organizations, and the lots and grounds thereto belonging, owned or held by any town or incorporated city, or dedicated by such town or city to health, ornament, or public use, or for the use of any fire or military company organized under the laws of this State. (16)—All material not exceeding one thousand dollars in value, purchased in good faith for use in the construction, alteration, or repair of any building, mining claim, or other improvements, as long as in good faith the same is about to be applied to the construction, alteration, or repair of such building, mining claim, or other improvement. (17)—All machinery, tools, and implements necessary in and for boring, sinking, putting down and constructing surface or artesian wells, also, the engines necessary for operating such machinery, implements, tools, etc.; also all trucks necessary for the transportation of such machinery, tools, implements, engines, etc.; provided, that the value of all the articles exempted under this subdivision shall not exceed one thousand dollars. (18)—All moneys, benefits, privileges, or immunities accruing or in any manner growing out of any life insurance, if the annual premiums paid do not exceed five hundred dollars, and if they exceed that sum, a like exemption exists, bearing the same proportion to the moneys, benefits, privileges, and immunities so accruing or growing out of such insurance that five hundred dollars bears to the whole annual premiums paid. (19)—Shares of stock in any building and loan association to the value of one thousand dollars. No article, however, or species of property mentioned above, is exempt from execution issued upon a



judgment recovered for its price, or upon a judgment of foreclosure of a mortgage or other lien thereon. (20) —A United States homestead cannot be attached or sold under execution for any debt contracted prior to proving up and obtaining title to the land. (21)—All money received by any person, a resident of the State, as a pension from the United States government, whether the same shall be in the actual possession of such pensioner, or deposited, loaned or invested by him.

Act of the legislature, in effect May 22, 1907.

Section 880.—HOMESTEAD MONEY EXEMPT.—The law with reference to State homesteads has already been stated in preceding sections, and to what extent such homesteads are exempt from attachment or execution. It should be added, that if the homestead be held by the owner, the proceeds arising from such sale, to the extent of the value allowed for a homestead exemption, as above stated, will be exempt from attachment for a period of six months from the time of the sale. If, for instance, the husband and wife should sell their homestead for five thousand dollars, they can take that money at any time within six months and put it into another homestead, and it will be also exempt when another declaration of homestead has been filed. The money will be exempt for six months, so as to give an opportunity to select and purchase another homestead with it.

Act of the Legislature, approved February 15, 1911.

Section 881.—MORTGAGED PROPERTY MAY BE ATTACHED.—Property, real or personal, which is mortgaged to another person, may be attached in a suit by a creditor, but the lien of the attachment is subject to the mortgage.

Section 882.—CREDITOR LIABLE FOR UNLAWFUL ATTACHMENT.—A creditor who makes an unlawful attachment, or causes it to be made, will be liable in damages for all in-

jury done to the person whose property is attached. If the holder of an obligation sues upon it, and causes an attachment to be issued and placed upon property of the debtor, as upon household furniture, or farming utensils, or horses, or cows, exempt by law from execution, he will be liable for all damages sustained by the unlawful seizure. His sureties on the attachment bond are liable to the extent of their bonds only, but he is liable to the full extent of the injury. The debtor may have the attachment released upon the ground that the property attached is exempt, and bring a suit for damages against the creditor and his bondsmen.

Section 883.—CREDITOR ATTACHING PERSONAL PROPERTY MUST PAY MORTGAGE.—It has already been shown that mortgaged property may be attached by a creditor of the owner, subject to the mortgage. Personal property mortgaged may be taken under attachment or execution issued at the suit of a creditor of a mortgagor; but before the property can be taken, the officer levying the attachment or execution must pay or tender to the mortgagee the amount of the mortgage debt and interest, or must deposit the money with the County Clerk or Treasurer, payable to the order of the mortgagee.

Civil Code, Section 2969.

Section 884.—GARNISHMENT.—There are certain effects of a debtor which cannot be seized and taken into the custody of the officer, but which may still be rendered liable to the payment of the debt, such as money owing to the debtor by a third person, or property in the hands of a third person belonging to the debtor. In a suit by the creditor against the debtor, the officer serves a notice upon the person owing the debtor, or having property of the debtor in his hands, that such property is attached; and this is called garnishment. The person upon whom the notice is served is called the garnishee. Thereafter,

he cannot pay his debt to the defendant, nor deliver the property to him, but must hold it to await the result of the suit. In this State, when required by the officer the garnishee must make a statement of the amount owing by him to the defendant, or showing the character and description of the property in his hands belonging to the defendant.

Section 885.—FOR WHAT PROPERTY GARNISHEE LIABLE.—The garnishee will be held liable for all personal property in his hands belonging to the defendant which is capable of being seized and sold upon execution. The garnishee will be liable for money in his hands belonging to the defendant, and a garnishment may be levied upon a bank or corporation, as well as upon an individual. The property must be in the actual possession of the garnishee, or within his control, so that he may be able to turn it over to the officer on execution.

Section 886.—MONEY DUE AS SALARY TO PUBLIC OFFICER.—The salary of a public officer can be attached or garnisheed. When a judgment is obtained against a public officer, a transcript of it may be filed with the State Controller or County or City Auditor, and so much of the officers salary as is not exempt from execution, shall be then paid over to the judgment debtor. (Statutes of 1903, page 362.)—A decision was made by the Supreme Court in a test case under the statute of 1903. A suit was brought in San Francisco to compel the Auditor to allow the salary of a public officer, but he refused on the ground that a part of the money had been attached under the new law. The Supreme Court decided that the law is constitutional, and that it will stand good as to all public officers and employes created or provided for by the Legislature. Therefore, when the Auditor pays the money due, from the State, or city, or county, into court, so much as is not exempt from execution must be paid to the judgment creditor. (Decided by the Supreme Court of California,

in the case of *Ruperich vs. Baehr*, which decision is printed in Volume 27 of California Decisions, No. 1465, page 359.)

Section 887.—**MONEY IN THE HANDS OF THE LAW.**—Money in the hands of the law, as money in the hands of a sheriff, or constable, or money deposited with a clerk of court to wait the determination of a suit, or money in the hands of a Receiver appointed by the court, cannot be taken by garnishment or attachment, for all such property is in the custody of the law, and until the law has done with it, no interference from any other source will be tolerated or allowed.

Section 888.—**ATTACHMENT OF PARTNERSHIP PROPERTY.**—Partnership property may always be attached for partnership debts. But a more serious question arises, where one partner owes debts and is sued by his creditor, outside of the partnership business. The decisions of the courts in different States have not been uniform, but in California the law appears to be settled, that a creditor of one partner may have an attachment levied upon the partnership property. The sheriff must take the whole property into his possession, but he cannot sell on execution the interests of both partners; he can only sell under the execution the interest of the partner against whom the judgment was obtained.

Section 889.—**DISSOLUTION OF ATTACHMENT.**—If an attachment has been improperly or irregularly issued, by the court in which the suit was brought, it will be discharged on motion of the defendant. If an attachment is issued in a case where the law does not provide for an attachment, or, if the plaintiff's complaint does not state a cause of action, or if other necessary papers essential to obtain a Writ of Attachment are fatally defective, the attachment will be held to be improperly or irregularly issued and the defendant will have a right to ask for the discharge of the attachment.



Section 890.—**BOND FOR RELEASE OF ATTACHED PROPERTY.**—The defendant in a suit, whose property is attached, may have the attachment released by giving a bond, with at least two sureties, as security that the property released will be re-delivered to the proper officer if the plaintiff recover a judgment in the action; or that, if the property is not turned over to the officer, the sureties will pay to the plaintiff the full value of the property released.

Code of Civil Procedure, Section 555.

Section 891.—**LIEN OF ATTACHMENT.**—The attachment will be a lien upon all real property attached for a period of three years after date of levy, unless sooner released or discharged by dismissal of the suit or by entry of judgment. The time may be extended by the court, upon motion made not less than five nor more than sixty days before the expiration of the three years, for a further period of two years, and thereafter similar extensions.

Act of the legislature, approved April 9, 1919;  
in effect July 22, 1919.

## JUDGMENTS AND EXECUTIONS

Section 892.—**JUDGMENTS.**—Whether any property is attached or not, a judgment may be obtained for the amount due, and costs of suit, and upon the judgment an execution is issued from the court in which suit is brought, directed to the Sheriff, and commanding that officer to sell enough of the debtor's property to pay the debt. All property not exempt from execution may be sold by the Sheriff and applied to the payment of the judgment. All sales of property under execution are made at public auction to the highest bidder.

Section 893.—**JUDGMENT A LIEN ON REAL PROPERTY.**—When a judgment is rendered in a suit in the Superior Court, the Clerk of the Court enters the judgment in his

official records, and makes up what is called a Judgment Roll, attaching together and filing the pleadings and certain other papers, for that purpose. Immediately after filing the Judgment Roll, the Clerk of the Court makes the proper entry of the judgment in the docket kept by him; and from the time the judgment is docketed it becomes a lien upon all the real property of the judgment debtor not exempt from execution in the county, owned by him at the time or which he may afterward acquire, until the lien ceases.

Code of Civil Procedure, Sections 670, 671.

**Section 894.—HOW LONG JUDGMENT LIEN CONTINUES.** The lien of a judgment docketed in the Superior Court continues for five years, on real property of the judgment debtor in the county.

**Section 895.—JUDGMENT LIEN ON PROPERTY IN ANOTHER COUNTY.**—A transcript of the original docket of the judgment, certified by the Clerk, may be filed with the Recorder of any other county, and from the time of the filing the judgment becomes a lien upon all the real property of the judgment debtor not exempt from execution in such other county, and this lien, unless the judgment be previously satisfied, continues for two years.

Code of Civil Procedure, Section 674.

**Section 896.—HOW JUSTICE COURT JUDGMENT IS MADE LIEN ON REAL PROPERTY.**—Reference has been made in the preceding Sections to the lien of judgments obtained in the Superior Court. But a lien upon the real property of the debtor may also be secured on a Justice Court judgment, by following certain requirements of the law of California. A person obtaining a judgment in the Justice Court, if he wishes to make it a lien upon the real property of his debtor, must ask the Justice to give him an abstract of the judgment, which it is the duty of the Justice to furnish on demand. This abstract of the judgment

must be filed in the office of the Recorder of the county in which the land of the debtor is situated, and when so filed, and from the time of filing, the judgment becomes a lien on such property.

A judgment rendered in a Justice's court creates no lien upon any lands of the defendant, unless such an abstract is filed in the office of the Recorder of the county in which the lands are situated. When so filed, and from the time of filing, the judgment becomes a lien upon all the real property of the judgment debtor, not exempt from execution, in such county, owned by him at the time, or which he may afterwards, and before the lien expires, acquire. The lien continues for two years, unless the judgment be previously satisfied.

At any time before the expiration of two years from the time of filing such abstract of judgment, and while the judgment is yet in force or unsatisfied, a successive abstract of such judgment may be likewise filed, and it shall have the effect of continuing such lien for a further period of two years from the time of filing the subsequent abstract of judgment; provided, however, that no such lien shall continue or be in force after five years from the time of the rendition of such judgment.

Code of Civil Procedure, Sections 897, 900.

Act of the Legislature, approved March 20, 1911.

Section 897.—TIME WITHIN WHICH EXECUTION MAY ISSUE.—The party in whose favor judgment is given may, at any time within five years after the judgment is entered, have a writ of execution issued for its enforcement.

Section 898.—EXEMPTION MUST BE CLAIMED BY DEBTOR. While the law exempts certain property of a judgment debtor from execution and forced sale, such exemption is a personal privilege, which may be waived by the debtor; and a failure to claim the property as exempt, when levied on to satisfy a judgment against him, within

a reasonable time thereafter, is a waiver of the exemption right; and the officer selling exempt property without such claim of exemption is not liable for its value.

A. J. BLEDSOE, Attorney-at-Law, Los Angeles, Cal.—  
General practice in all courts. Letters from clients in any part of the State promptly answered. Written opinions sent by mail. Special attention given to organizing Common Law Companies. See title page of this book for office address of A. J. Bledsoe.



## PART VIII

### WILLS

Section 899.—**MAKING A WILL.**—The law of California designs to encourage the making of wills, and whenever the last will and testament of a deceased person—who in his lifetime thus endeavored to direct the disposition of his property when he should have done with the business of this world—whenever such an instrument has come before the Supreme Court of this State, and has become the subject of attack by dissatisfied relatives, the law relative to the making of wills has always been liberally construed, with a sincere desire to carry out the intentions of the testator. The courts of late years have come to look with more or less suspicion upon the many attempts to break wills made in this State. Disgraceful scandals have been the aftermath of so many will contests, and bribery and perjury of witnesses such frequent circumstances, that the Supreme Court alone has been able to stem the tide of corruption which has followed many of California's rich men to the grave. Now, the frequent decisions of the Supreme Court in favor of the validity of wills, and the fearless rulings of some Judges of the Superior Court, setting aside verdicts of juries when evidently induced by passion and prejudice, are having a good effect. The number of will contests may not be decreased, as long as credulous clients have money to pay eager lawyers; but the people of California may at all events feel greater security in the irrevocable character of last wills and testaments. And whether a person be rich or poor, whether the estate disposed of by will be large or small, it is the intention of the law of California that the solemn act thus expressed shall be protected and enforced.

Section 900.—WHO MAY MAKE A WILL.—Every person in California over the age of 18 years, and of sound mind, may make a last will, and thus dispose of all his estate, real and personal.

Section 901.—WILL OF MARRIED WOMAN.—A married woman may dispose of all her separate property by will, without the consent of her husband, and may alter or revoke the will in like manner as if she were single. The will of a married woman must be executed and proved in the same manner as other wills.

Civil Code, Section 1273.

Section 902.—ONE-HALF OF COMMUNITY SUBJECT TO TESTAMENTARY DISPOSITION OF WIFE.—Upon the death of the wife, one-half of the community property belongs to the surviving husband, and the other half is subject to the testamentary disposition of the wife, and in the absence of such testamentary disposition, the entire community property goes to the surviving husband without administration, except such portion thereof as may have been set apart to the wife by judicial decree for her support and maintenance, which portion is subject to her testamentary disposition, and in the absence of such disposition goes to her descendants or heirs, exclusive of her husband. When the wife makes testamentary disposition of her interest in the community property, the entire community property is subject to the community debts, and the charges and expenses of administration. Prior to admission of any such will to probate, the husband shall continue in the management and control of the community property; after the admission of the will to probate, the court may, and so far as the proper and advantageous administration of the estate will permit, must continue the management and control of the community property in the husband, who from time to time shall account to the estate for such management and control.

Act of the Legislature, approved May 27, 1919; in effect July 27, 1919.

Sections 902, 903, 904, pages 674, 675, "Business Law for Business Men"  
—DISPOSING OF PROPERTY BY WILL—The law stated in the three  
sections above referred to, 902, 903, 904, has been repealed by vote of the  
people.





Section 903.—ONE-HALF SUBJECT TO TESTAMENTARY DISPOSITION OF HUSBAND.—Upon the death of the husband, one-half of the community property belongs to the surviving wife, and the other half is subject to the testamentary disposition of the husband, and in absence of such testamentary disposition, it all goes to the surviving wife upon administration. In case of the dissolution of the community by the death of the husband, the entire community property is equally subject to his debts, the family allowance and the charges and expenses of administration.

The one-half of the community property which belongs to the surviving spouse shall not be subject to inheritance tax or be reckoned as part of the estate of the deceased spouse for the purpose of fixing the compensation of executors or administrators or fixing attorneys fees.

Act of the Legislature, approved May 27, 1919,  
in effect July 27, 1919.

Section 904.—CONSENT TO DISPOSE OF PROPERTY BY WILL.—Either husband or wife may, by will, dispose of his or her half of the community property by and with the consent of the other, which consent must be in writing upon or attached to the will; but either spouse may, without the consent of the other, make such testamentary disposition in favor of the other spouse or of the lineal descendants of the testator.

Act of the Legislature, approved May 27, 1919; in  
in effect July 27, 1919.

Section 905.—WHO MAY TAKE BY WILL.—Any natural person may take property by will in this State.

(a) *Restriction on devise for charitable uses.*—No estate, real or personal, shall be bequeathed or devised to any charitable or benevolent society or corporation, or to any person or persons in trust for charitable uses, except

the same be done by will duly executed at least thirty days before the decease of the testator; and if so made at least thirty days prior to such death, such devise or legacy and each them shall be valid; *provided*, that no such devise or bequest shall collectively exceed one-third of the estate of the testator, leaving legal heirs, and in such case a pro rata deduction from such devises or bequests shall be made so as to reduce the aggregate thereof to one-third of such estate; and all dispositions of property made contrary hereto shall be void, and go to the residuary legatee or devisee, next of kin, or heirs, according to law; *and provided further*, that bequests and devises to the state, or to any state institution, or for the use or benefit of the state or any state institution, or to any educational institution which is exempt from taxation or for the use or benefit of any such educational institution, are excepted from the restrictions of this section; *provided, however*, that nothing in this section contained shall apply to bequests or devises made by will executed at least six months prior to the death of a testator who leaves no parent, husband, wife, child or grandchild, or when all of such heirs shall have by writing, executed at least six months prior to his death, waived the restriction contained herein.

Act of the Legislature, approved May 5, 1919, in effect July 22, 1919.

Section 906.—KINDS OF WILLS.—There are three kinds of will recognized by the law of California—a nuncupative will; an olographic will; and a will signed by the testator and by attesting witnesses.

Section 907.—NUNCAPATIVE WILLS.—The kind of will called “nuncupative” is only made under peculiar and extraordinary circumstances. A person in actual military service in the field, or doing duty on a ship at sea, and in actual contemplation, fear, or peril of death, or in

expectation of immediate death from an injury received the same day, may make a nuncupative will. A nuncupative will is not required to be in writing, nor to be declared or attested with any formalities. To make a nuncupative will valid, and to entitle it to be admitted to probate, it must further appear that the estate bequeathed does not exceed in value the sum of one thousand dollars; and two witnesses who were present at the making of the will must prove it, and one of the witnesses must have been asked by the testator at the time to be a witness that such was his will.

Section 908.—OLOGRAPHIC WILLS.—An olographic will is one that is entirely written, dated, and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of the State, and need not be witnessed. The law must be strictly followed in making such a will. It may be written on any kind of paper, and it is not required to be in any particular form; but it must be entirely in the testator's handwriting. If a person, intending to make an olographic will, dictates to some one who writes the body of it for him and then signs it himself, it is not a valid will, for the law expressly declares that he must write it all himself. So, if a person uses a blank form and fills out the blanks in his own handwriting and signs his name, yet the law has not been complied with, and the instrument is void as a will. Every word and every figure in it, to be a valid olographic will, must be in the handwriting of the person making it. If any part of it is in the handwriting of any other person, or if any part of it is printed, it will be illegal and invalid. In one case in California it was decided that nothing more than the figures "1880" in print, after "April 1" in the testator's handwriting, made the document illegal as an olographic will. Not only must the document be entirely in the handwriting of the person making an olographic will, but it must always be dated. If otherwise lawfully made, that is, written and signed by the testator himself,

but with the date omitted, the paper is invalid as a will. As before stated, a will of this kind need not be in any particular form. It may even be in the form of a letter, and if it appears that the writer intended to thus make a testamentary disposition of his property, it will be considered as his last will and testament. When a will is thus lawfully made, entirely written, dated, and signed by the hand of the testator himself, it constitutes the most satisfactory manner in which a will can be made, and is less liable to the attacks of will-breaking lawyers than is a formal will, written and executed under the supervision of a legal adviser. For olographic wills are usually brief, whereas a will in the handwriting of a lawyer is apt to have its length gauged by the size of the estate or the amount of the fee; and, too, an olographic will is free from the technical terms and legal phrases which never cease to stir up controversies in the courts. For these reasons, an olographic will, when made by a person of ordinary intelligence, is the kind to be preferred.

Civil Code, Section 1277.

Section 909.—FORM OF OLOGRAPHIC WILL.—The following is a form of olographic will, which meets the requirements of the law. The date, names, amounts, and the signature must be filled in, and the whole written by the maker of the will alone:

....., Cal., ....., 19.....

I declare this to be my last will and testament. I give and bequeath to .....the sum of .....Dollars; I give and bequeath to .....the sum of .....Dollars; I give and bequeath to .....and .....all the residue of my property, of whatever kind and wherever situated, share and share alike.

.....  
The foregoing form will be as good as any other; and, indeed, any form is good as an olographic will, if the in-



tention of the writer to make it his will appears in it, and the disposition which he desires to make of his property.

Section 910.—WILL ATTESTED BY WITNESSES.—A will which is not in the handwriting of the maker must be executed and attested as follows: (1) It must be subscribed at the end by the testator himself, or some person in his presence and by his direction must subscribe his name to it; (2) The subscription must be made in the presence of the attesting witnesses, or be acknowledged by the maker to them to have been made by him or by his authority; (3) The maker must, at the time of subscribing or acknowledging the will, declare to the attesting witnesses that the instrument is his will; (4) There must be two attesting witnesses to a will, and each of them must sign the will as a witness, at the end of it, at the testator's request and in his presence. The testator must either sign his name at the end of the will, or have it signed by some one in his presence and at his direction.

Civil Code, Section 1276.

Section 911.—GIFTS TO SUBSCRIBING WITNESSES.—All legacies and gifts of any kind, made or given in any will to a subscribing witness, are void, unless there are two other competent subscribing witnesses to the will.

Civil Code, Section 1282.

Section 912.—HOW A WILL IS REVOKED.—The law declares what acts work the revocation of a will in this State.

A will is revoked by a later will, declaring the revocation of the prior one.

A will is revoked by being burned, torn, canceled, obliterated, or destroyed, with the intent and purpose of revoking it, by the testator himself, or by some person in his presence and by his direction.

When a will is canceled or destroyed by any other person than the testator, the direction of the testator, and

the fact of such cancellation or destruction, must be proved by two witnesses.

A prior will is not revoked by a subsequent will, unless the latter contains an express revocation, or provisions wholly inconsistent with the terms of the former will; but in other cases the prior will remains effectual so far as consistent with the provisions of the subsequent will.

Civil Code, Sections 1292, 1293, 1296.

Section 913.—REVOCATION BY MARRIAGE.—If, after making a will, the testatrix marries, and the husband survives the testatrix, the will is revoked, unless provision has been made for him by marriage contract, or unless he is provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of revocation can be received.

Act of the Legislature, approved May 27, 1919;  
in effect July 27, 1919.

Section 914.—REVOCATION BY MARRIAGE AND BIRTH OF ISSUE.—If, after making a will, the testatrix marries, and has issue of said marriage, born either in her life time or after her death, and the husband or issue survives her, the will is revoked, unless provision has been made for such issue by some settlement, or unless such issue are provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of such revocation can be received.

Act of the Legislature, approved May 27, 1919;  
in effect July 27, 1919.

Section 915.—SHARE OF CHILD BORN AFTER THE WILL. Whenever a testator has a child born after the making of his will, either in his lifetime or after his death, and dies leaving such child unprovided for by any settlement, and neither provided for nor in any way mentioned in his will,

the child succeeds to the same portion of the testator's real and personal property that he would have succeeded to if the testator had died intestate.

Civil Code, Section 1306.

Section 916.—OMISSION TO PROVIDE FOR CHILDREN.—When any testator omits to provide in his will for any of his children, or for the issue of any deceased child, unless it appears that such omission was intentional, the law declares that such child or the issue of such child must have the same share in the estate of the testator as if he had died intestate. But the law also provides that a child who has had his share of the estate advanced to him during the lifetime of the testator, even though not mentioned in the will, is not entitled to any more.

Civil Code, Sections 1307, 1309.

Section 917.—CHILDREN OF DEVISEE.—When any estate is devised to any child, or other relation of the testator, and the devisee dies before the testator, leaving lineal descendants, such descendants take the estate so given by the will in the same manner as the devisee would have done had he survived the testator.

Civil Code, Section 1310.

Section 918.—WHEN WILL TAKES EFFECT.—A will takes effect at the testator's death. It can have no effect to pass any title before his death.

Section 919.—WHEN LEGACIES ARE DUE.—Legacies are due to those entitled to them at the expiration of one year after the testator's death.

Section 920.—INTEREST ON LEGACIES.—Ordinary legacies bear interest from the time when they become due. A legacy to the testator's widow bears interest from the date of his death.

Section 921.—**GROUND FOR CONTEST OF WILL.**—The law specifies, as the grounds for the contest of a will, duress, menace, fraud, or undue influence; and, also, it is a common ground for the contest of a will, that the testator was not of sound mind. If advantage is taken of an old and feeble person, and the facts are misrepresented or concealed, or threats or fraudulent persuasions resorted to, by which a testator is fraudulently induced to exclude from his will the natural object of his bounty, whom he would otherwise have remembered and provided for, the law will interfere on behalf of the injured party and set the will aside. Yet it will require clear and convincing proof to set aside a will upon these grounds.

By far the larger number of will contests are made upon the ground that the testator was not of sound and disposing mind, but on the contrary was afflicted with insanity. On this subject it may be said, that if there had not been so many expert witnesses the world would never have heard of so many forms of insanity. Expert witnesses on insanity are ever ready to swear on either side of a will contest, as they happen to be first employed, and to frame their theories according to their interests. The Supreme Court of California has announced, time and again, its own distrust of expert testimony, and has endeavored to be guided by the rules of reason and common sense in its disposition of will cases. The facts must be recognized, that there is no satisfactory definition of insanity, either in or out of the medical profession; that no man can truly mark the dividing line between sanity and insanity; that a person may be exceedingly eccentric, and yet not be at all insane; that by a "sound mind" is meant only that a person, in order to make a valid will, must be of sufficient understanding to know the character and extent of his property, to know and recollect the natural objects of his bounty, to know to whom he wishes to leave his property, and to appreciate and know the character of his act when he makes his will. If this is the state of his mind, no eccentricity of speech or conduct,



and no impairment of mental power, will have any effect to invalidate the solemn act of disposing of his estate by last will and testament.

A. J. BLEDSOE, ATTORNEY-AT-LAW, Los Angeles, Cal.—Careful attention to Probate of Wills and Settlement of Estates. See title page of this book for office address of A. J. Bledsoe.

## PART IX.

### CORPORATIONS IN CALIFORNIA

Section 922.—NATURE OF CORPORATIONS.—The definition of corporations given by the law of California is, “A corporation is a creature of the law, having certain powers and duties of a natural person.” Unlike a natural person, who may act in business affairs as his individual will may dictate, a corporation can only act through its officers in the manner prescribed by the law creating it. The nature of a corporation is peculiar in another respect. While the rights and privileges of a natural person, considered as such, will terminate by his death, the rights and privileges of the corporation do not end, or vary, upon the death or change of any of the individual members. Judge Kent, the eminent lecturer on law, has said that the object of a corporation is “to enable the members to act by one united will, and to continue their joint powers and property in the same body, undisturbed by the change of members, and without the necessity of perpetual conveyances, as the rights of members pass from one individual to another. All the individuals composing a corporation, and their successors, are considered in law but as one moral person, capable, under an artificial form, of taking and conveying property, contracting debts and duties, and of enjoying a variety of civil and political rights.”

Civil Code, Section 283.

Section 923.—FOR WHAT PURPOSE CORPORATIONS MAY BE FORMED.—In California, corporations may be formed for any purpose for which individuals may lawfully associate themselves. And as individuals may enter into any

business transactions not prohibited by law, so a corporation may be formed for the purpose of carrying on any lawful business, of any kind whatever.

Civil Code, Section 286.

Section 924.—WHO MAY FORM A CORPORATION.—The law places but two restrictions upon the formation of corporations, respecting the persons who may organize them. At least three persons must join in the formation of a corporation, or as many more as may be desired; and, whether a corporation be formed by three persons, or a number more than three, a majority of such persons must be residents of the State of California. Foreign corporations may do business in the State, but a corporation cannot be formed here unless a majority of the persons forming it are residents of the State.

Civil Code, Section 285.

Section 925.—ARTICLES OF INCORPORATION.—The instrument by which a corporation is formed is called “Articles of Incorporation.” Articles of Incorporation must be prepared, setting forth: (1) The name of the corporation; (2) the purpose for which it is formed; (3) the place where its principal business is to be transacted; (4) the term for which the corporation is to exist; (5) the number of its directors; (6) the amount of its capital stock, if any, and the number of shares into which it is divided; (7) the amount actually subscribed, and by whom.

Civil Code, Sections 289, 290.

Section 926.—FORM OF ARTICLES OF INCORPORATION.—The following is a form of Articles of Incorporation, which meets the requirements of the law:

### ARTICLES OF INCORPORATION.

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned, have this day voluntarily associated ourselves together for the purpose of forming a corpora-

tion, under the laws of the State of California; and we hereby certify,

First—That the name of said corporation is.....

(Here insert the name selected for the corporation.)

Second—That the purposes for which it is formed are to carry on the business of.....

(Here insert the purposes of the corporation.)

Third—That the place where its principal business is to be transacted is the city of.....

(Here insert the name of the place.)

Fourth—That the term for which said corporation is to exist is .....

(Here insert number of years.)

years from and after the date of its incorporation.

Fifth—That the number of Directors of said corporation shall be .....

(Here insert number of Directors agreed upon.)

and that the names and residence of the Directors who are appointed for the first year are :

Names.

Residence.

(Here insert names and residence of Directors.)

Sixth—That the amount of the capital stock of said corporation shall be.....Dollars, divided into.....~~thousand~~ shares, of the par value of.....Dollars each.



Seventh—That the amount of said capital stock which has been actually subscribed is.....Dollars, and the following are the names of the persons by whom the same has been subscribed, to-wit:

Subscriber.	Number of Shares.	Amount.
.....	.....	.....
.....	.....	.....
.....	.....	.....

(Here insert names of subscribers, number of shares subscribed for, and amount of each subscription.)

In witness whereof, we have hereunto set our hands and seals, this.....day of....., 19.....

STATE OF CALIFORNIA, }  
COUNTY OF..... } ss.

On this.....day of....., in the year one thousand nine hundred and....., before me,....., a Notary Public in and for said county, residing therein, duly commissioned and sworn, personally appeared

....., .....  
....., .....  
and ....., personally known to me to be the persons whose names are subscribed to the within instrument, and they each duly acknowledged to me that they executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the County of....., State of California, the day and year in this certificate first above written.

Notary Public in and for the County  
of....., State of California.

Commission expires....., 19.....

Section 927.—NUMBER OF SIGNERS.—The Articles of Incorporation must be signed by at least three persons, a majority of whom must be residents of California, and each of whom must make an acknowledgment before a notary or other officer authorized to take acknowledgments. If there are more than three Directors, all must sign and acknowledge the Articles of Incorporation.

Civil Code, Section 292.

Section 928.—FILING OF ARTICLES OF INCORPORATION.—The Articles of Incorporation, when prepared and signed and acknowledged, must be filed in the office of the County Clerk of the county in which the principal place of business is located; and a copy, certified by the County Clerk, must be filed in the office of the Secretary of State at Sacramento.

Section 929.—CERTIFICATE OF SECRETARY OF STATE.—Upon receiving and filing in his office the certified copy of the Articles of Corporation filed with the County Clerk, the Secretary of State issues to the corporation, over the great seal of the State of California, a certificate that a copy of the Articles containing the required statement of facts has been filed in his office; and from the time when this certificate is issued the persons signing the Articles of Incorporation, and their associates and successors, become and are created a corporation, under the name chosen by them.

Civil Code, Section 296.

Section 930.—NAME OF CORPORATION MUST BE NEW.—The name selected by the incorporators must be new; that is, it must not have the same name as any other corporation before organized in this State; nor can the name selected so closely resemble the name of any other existing corporation that it will tend to deceive; and if Articles of Incorporation are sent to the Secretary of State which contain the same name as an existing corporation, or a

name so closely resembling it as tends to deceive the public, it will be his duty under the law to refuse to file the Articles or issue his certificate.

Civil Code, Section 296.

Section 931.—COST OF INCORPORATING.—The fees for forming a corporation, to be paid the Secretary of State, are as follows: (1) For filing Articles of Incorporation, if the capital stock amounts to twenty-five thousand dollars or less, fifteen dollars; if the capital stock amounts to over twenty-five thousand dollars, and not over seventy-five thousand dollars, twenty-five dollars; if the capital stock amounts to over seventy-five thousand dollars, and not over two hundred thousand dollars, fifty dollars; if the capital stock amounts to over two hundred thousand dollars, and not over five hundred thousand dollars, seventy-five dollars; if the capital stock is over five hundred thousand dollars, and not over one million dollars, one hundred dollars; if the capital stock is over one million dollars, fifty dollars additional for every five hundred thousand dollars or fraction thereof of capital stock over and above one million dollars. (2) For filing Articles of Incorporation without capital stock, except co-operative associations, five dollars. (3) For filing Articles of Incorporation of co-operative associations, fifteen dollars. (4) For recording Articles of Incorporation, twenty cents per folio. (5) For issuing certificate of incorporation, three dollars.

Political Code, Section 409.

Section 932.—LIMIT OF CORPORATE EXISTENCE.—A corporation, being a creature of the law, can only continue for the length of time which the law prescribes. The law of California provides that the limit of time for which a corporation can be formed in this State is fifty years. The Articles of Incorporation may fix a period of existence less than fifty years, but cannot provide for a longer period.

Civil Code, Section 296.

Section 933.—EXTENDING CORPORATE EXISTENCE.—Every corporation formed for a period less than fifty years may, at any time prior to the expiration of the term of its corporate existence, extend such term to a period not exceeding fifty years from its formation. Such extension may be made at a meeting of the stockholders or members, called by the directors expressly for considering the subject, if voted by stockholders representing two-thirds of the capital stock; or may be made upon the written assent of that number of stockholders or members. A certificate of the proceedings of the meeting must be signed by the chairman and the secretary of the meeting, and be filed in the office of the county clerk, and a certified copy must be filed in the office of the Secretary of State. The fee to be paid the Secretary of State, for filing certificate of continuance of existence, is \$5; and for issuing certificate of continuance by the Secretary of State, \$3.

Section 934.—AMENDMENT OF ARTICLES OF INCORPORATION.—Any corporation organized under the laws of this state may amend its articles of incorporation for any or all the following purposes:

- (1) To set forth a new name.
- (2) To alter or repeal any provision appearing in its original or amended articles of incorporation relative to the purposes for which the corporation is formed, or to set forth additional powers or purposes.
- (3) To designate a principal place of business other than the place designated in its original or amended articles of incorporation.
- (4) To state the date to which its existence has been extended.
- (5) To state the number of its directors, as increased or diminished.
- (6) To state the amount of its capital stock as increased or diminished and the number of shares and the par value thereof, or to change the number of shares



Section 933, page 690, "Business Law for Business Men"—EXTENDING CORPORATE EXISTENCE—Substitute the following for the first sentence in section 933: Every corporation heretofore or hereafter formed, and existing under the laws of this state, may at any time prior to the expiration of the term of its corporate existence extend such term to a period not exceeding fifty years from the date of such extension.

Act of the Legislature of California, approved May 16, 1921; in effect July 16, 1921.



and their par value or to provide for the classification of its capital stock into preferred and common shares, in which event there must be set forth a statement of the number of shares of stock to which preference is granted and the number of shares of stock to which no preference is granted, also a clear and succinct statement of the nature and extent of the preference granted, and except as to the matters and things so stated, no distinction shall exist between said classes of stock or the owners thereof; *provided, however*, that no preference shall be granted nor shall any distinction be made between the classes of stock either as to voting power or as to the statutory or constitutional liability of the holders thereof to the creditors of the corporation; and *provided, further*, that both the preferred and common shares shall be of the same par value.

(7) To change the statement appearing in its original or amended articles of incorporation of the nature and extent of such preference, subject to the above limitations.

(8) And generally to provide for any other amendment not contrary to law.

(a) *Majority Vote of Directors*.—The articles of incorporation may be amended as aforesaid by a majority vote of the board of directors of the corporation and by the vote or written assent of the holders of at least two-thirds of the subscribed capital stock of such corporation, or if the corporation has no capital stock, then by a majority vote of its board of directors and by the vote or written assent of a majority of the members. Upon the adoption of amended articles of incorporation, a copy of the articles as thus amended shall be certified to as correct by the president and secretary and a majority of the directors of the corporation and the corporate seal of such corporation shall be affixed to the certificate. Such certificate shall also set forth the proceedings by virtue of which the amended articles were adopted, which proceed-

ings must be in accordance with the provisions of this section above set forth.

(b) *Amended Articles Filed*.—The copy of amended articles of incorporation, thus certified, shall be filed in the office of the county clerk of the county in which the original articles of incorporation of such corporation were filed, and a copy thereof, certified by such county clerk, shall be filed in the office of the secretary of state, whereupon such corporation shall have the same powers, and the stockholders thereof shall thereafter be subject to the same liabilities, as if such amendment had been embraced in the original articles of incorporation. A copy of such copy, certified by the secretary of state, shall be filed in the office of the county clerk of every county in which such corporation has or holds real property, except only the county in which the original articles of incorporation were filed. Any corporation which shall amend its articles of incorporation and shall fail to file copies of its amended articles, as required by the preceding sentence, shall be subject to the penalties and liabilities provided for a failure of corporations to file copies of their articles of incorporation in the office of the county clerks of the counties in which they shall purchase, hold, or locate property.

(c) *Changes Not Permitted*.—Nothing contained in this section must be construed to cure or amend any defect existing in the original articles of incorporation, where such defect is of such character as to render such original articles invalid. And it is hereby expressly provided that no corporation shall amend its articles of incorporation to alter the statements which appear in the original articles, of the names and residences of the first directors or the statements which appear in such originals, of the amount of capital stock subscribed and by whom. Nothing appearing herein shall be construed as permitting a corporation to change its name or its principal place of business, extend or reduce its term of existence, or increase or diminish its number of directors or



its capital stock, by amending its articles of incorporation.

Statutes of 1915, Chapter 739.

Section 935.—CHANGE OF NAME.—A corporation may change its name. If a corporation desires to change its name, a petition asking for the change of name may be filed in the Superior Court of the county in which its Articles of Incorporation were originally filed, or in which its property is situated. A copy of the petition must be published for four weeks. The court will then hear the petition, and any objections which any person may have to make against the change of name; and if satisfied that the application is made for a good reason, the court may make an order changing the name of the corporation. A certified copy of the decree of the court must be filed in the office of the Secretary of State and in the office of the County Clerk.

Civil Code, Sections 1276, 1277, 1278.

Section 936.—CHANGE OF PLACE OF BUSINESS.—A corporation may change its place of business from one place to another in the same county, or from one city or county to another city or county in the State. Before such change can be made, the consent, in writing, of the holders of two-thirds of the capital stock or two-thirds of the members, if there is no capital stock, must be obtained and filed in the office of the corporation; then notice of the intended removal must be published at least once a week for three weeks, in a newspaper in the county; the Board of Directors must then meet and authorize the change; and a copy of the resolution adopted by the Board, together with an affidavit of the publication of the notice (certified by the President and Secretary, with the corporate seal affixed), must be filed in each office where the original Articles of Incorporation were filed. After these requirements are complied with, a corporation may lawfully change its place of business.

Statutes of 1917, Chapter 167.

**Section 937.—REMOVAL FROM ONE LOCATION TO ANOTHER IN SAME CITY.**—The law does not require any consent of stockholders, or notice, or publication, where a corporation desires to remove its place of business from one location to another in the same city, town or village. Such removal may be made by authority alone of a resolution of the Board of Directors.

**Section 938.—FOREIGN CORPORATIONS.**—Every corporation organized under the laws of another state, territory, or of a foreign country, which is now doing interstate or intrastate business in this state or maintaining an office herein, and which has not filed with the secretary of state prior to the day on which this act takes effect the document or documents required by this section, or which shall hereafter do such business in this state or maintain an office herein, or which shall enter this state for the purpose of doing such business herein, must file in the office of the secretary of state of the State of California a certified copy of its articles of incorporation, or of its charter, or of the statute or statutes, or legislative, or executive, or governmental act or acts creating it, in cases where it has been created by charter, or statute, or legislative, or executive, or governmental act, duly certified by the secretary of state or other officer authorized by the law of the jurisdiction under which such corporation is formed to certify such copy, and must also file a certified copy thereof, duly certified by the secretary of state of this state in the office of the county clerk of the county where its principal place of business in this state is located, and also where such corporation owns any real property. With such certified copy of its articles of incorporation, charter or legislative, executive or governmental act creating it, such corporation shall also file with the secretary of state an affidavit sworn to by the president or secretary of such corporation, which shall state the amount of such corporation's authorized capital stock at or within fifteen days prior to such filing. Every

such corporation shall pay to the secretary of state for filing in his office such certified copy of its articles of incorporation, or of its charter, or of the statute or statutes, or legislative, or executive, or governmental act or acts creating it, a fee of seventy-five dollars; *provided*, that foreign corporations organized for educational, religious, scientific or charitable purposes and having no capital stock, and foreign nonprofit corporations shall pay a fee of five dollars for filing the document or documents hereinabove required.

Foreign corporations shall also file any amendment of or change in any of the provisions of its original articles of incorporation, or charter, or of the statute or legislative, executive or governmental act or acts creating it.

(a) *Affidavit Showing Capital Stock*.—Every foreign corporation subject to the tax provided by law shall file with the secretary of state, at the time it tenders payment of said tax and any penalty which has accrued, an affidavit sworn to by its president or secretary, showing the amount of its authorized capital stock on the first day of January of the year in which said payment is made, and in the event that such authorized capital stock, as shown by such affidavit, differs from the amount of such capital stock as appears from the records of the secretary of state, then the tax shall be measured by the amount of the capital stock shown in such affidavit. The license required shall not be issued nor shall the amount so tendered be accepted until copies of any documents relating to such change in authorized capital stock, certified as required by law, shall have been filed with the secretary of state.

(b) *Representative of Foreign Corporation*.—Every foreign corporation shall file with the secretary of state a designation of some person residing within this state upon whom process issued by authority of law may be served as the representative, for such purpose, of such corporation. A copy of such designation certified by the secretary of state is sufficient evidence of the appointment

of such representative. Such process may be served on the person so designated, or, in the event that no such representative is designated, then on the secretary of state, and such service shall be a valid and binding service on such corporation.

(c) *Benefit of Law.*—Every corporation which complies with the provisions of this section is thereafter entitled to the benefit of the laws of this state limiting the time for the commencement of civil actions, but any corporation created by or under the laws of any foreign state or country and that has not complied with this section is not entitled to the benefit thereof, nor can any such foreign corporation maintain or defend any action or proceeding concerning its property in this state or any intrastate business or transaction in any court of this state, or acquire or convey any legal title to any real property within this state. In any action or proceeding instituted against any body styled as a corporation, but not created by nor under the laws of this state, evidence that such body has acted as a corporation, or employed methods usually employed by corporations, must be received by the court for the purpose of proving the existence of such corporation, the sufficiency of such evidence to be determined by the court with like effect as in other cases. Every corporation which has complied with the law requiring it to make and file a designation of the person upon whom process against it may be served, need not make or file any further designation. Any designation made may be revoked by the filing by the corporation with the secretary of state of a writing stating such revocation. Within forty days after the death or removal from the state of any person designated by the corporation, or after the revocation of the designation, the corporation must make a new designation, or be subject to the provisions and penalties of this section; *provided, however*, that any foreign corporation which, prior to the eighth day of March, 1901, shall have complied with the



Section 938, page 697, "Business Law for Business Men"—FOREIGN CORPORATIONS—Add the following after sub-division (c): "Every corporation subject to the provisions of this section and every such corporation hereafter becoming subject to the provisions thereof, which shall neglect or fail to file with the secretary of state as herein provided, shall be subject to a fine of not less than five hundred dollars to be recovered in any court of competent jurisdiction.

Act of the Legislature of California, approved May 26, 1921; in effect July 26, 1921.



provisions of the act entitled, "An act to amend 'An act in relation to foreign corporations,' approved April first, 1872," approved March seventeenth, 1899, shall, in lieu of the provisions of this section above set forth, file the affidavit and designation of representative herein required, and the license tax due from such corporation shall be measured by the authorized capital stock, as shown thereby.

Act of the Legislature, approved May 11, 1917;  
in effect May 11. 1917.

Section 939.—ANNUAL LICENSE TAX.—Except those corporations hereinafter specified, every corporation incorporated under the laws of this state, and every corporation incorporated under the laws of any other state, territory, or foreign country now doing intrastate business within this state, or which shall hereafter engage in intrastate business in this state, shall procure annually from the secretary of state a license authorizing the transaction of such business in this state, and pay therefor the license tax prescribed herein.

For the purpose of measuring said tax the secretary of state shall examine all articles of incorporation and all documents on file in his office relating to an increase or decrease in the authorized capital stock of corporations which are subject to said tax, and determine the amount due from each corporation by the following rule:

(a) *Determination of Tax.*—When the authorized capital stock of the corporation does not exceed ten thousand dollars, the tax shall be ten dollars; when the authorized capital stock exceeds ten thousand dollars, but does not exceed twenty thousand dollars, the tax shall be fifteen dollars; when the authorized capital stock exceeds twenty thousand dollars but does not exceed fifty thousand dollars, the tax shall be twenty dollars; when the authorized capital stock exceeds fifty thousand dollars but does not exceed one hundred thousand dollars, the tax shall be twenty-five dollars; when the authorized capital

stock exceeds one hundred thousand dollars but does not exceed two hundred fifty thousand dollars, the tax shall be fifty dollars; when the authorized capital stock exceeds two hundred fifty thousand dollars but does not exceed five hundred thousand dollars, the tax shall be seventy-five dollars; when the authorized capital stock exceeds five hundred thousand dollars but does not exceed one million dollars, the tax shall be one hundred dollars; when the authorized capital stock exceeds one million dollars but does not exceed three million dollars, the tax shall be two hundred dollars; when the authorized capital stock exceeds three million dollars but does not exceed five million dollars, the tax shall be three hundred fifty dollars; when the authorized capital stock exceeds five million dollars but does not exceed seven million five hundred thousand dollars, the tax shall be five hundred fifty dollars; when the authorized capital stock exceeds seven million five hundred thousand dollars but does not exceed ten million dollars, the tax shall be eight hundred dollars; when the authorized capital stock exceeds ten million dollars the tax shall be one thousand dollars; when the capital stock of any corporation has no par value the tax shall be one hundred dollars; when part of the capital stock of any corporation has a par value and a part of such stock has no par value, the tax shall be computed upon such par value stock in accordance with the admeasurement schedule herein established, to which sum shall be added the sum of fifty dollars. Building and loan companies and associations shall pay an annual license tax of ten dollars.

(b) *Tax on Corporations Having No Capital Stock.* All corporations having no capital stock, but organized for profit, shall pay an annual tax of ten dollars. Said license tax shall be due and payable to the secretary of state on the first day of January of each and every year. Such license tax shall be paid on or before the hour of six o'clock p. m. of the first Monday of February of each year, and if not so paid shall at said hour become delin-



quent and there shall thereupon be added thereto as a penalty for such delinquency the sum of ten dollars.

(c) *Tax Authorizes Transaction of Business.*—The license hereby provided authorizes the domestic corporations holding the same to transact business in this state, and authorizes foreign corporations to transact intrastate business in this state, during the year or any fractional part of such year for which such license is issued. "Year," within the meaning of this act, means from and including the first day of January to and including the thirty-first day of December next thereafter.

(d) *License Tax for Part of Year.*—At the time any corporation subject to the license tax provided herein shall file certified copy of articles of incorporation, or charter, or statute or statutes, or legislative, or executive or governmental act or acts creating a corporation, when filed between the first day of January and the thirty-first day of December, inclusive, in any year, there shall be paid to the secretary of state, in addition to all other fees required by law, that proportion of the license tax specified in this act which the unexpired number of months of such year bears to the entire year, including the month in which such filing occurs, and thereupon the secretary of state shall issue a license for such fractional part of the then current year.

(e) *Corporations Exempt.*—Corporations organized and conducted solely and exclusively for educational, religious, scientific or charitable purposes, corporations which are not organized or conducted for profit, corporations organized under the laws of any other state, territory or foreign country doing solely and exclusively an interstate or foreign business, and those corporations taxed under subdivisions (a), (b) and (c) of section fourteen of article XIII of the constitution, are exempt from payment of the tax provided by this act.

(f) *Corporation License Tax Exemption Board.*—The secretary of state, state controller and members of the state board of control shall be and are hereby constituted

the "corporation license tax exemption board." Except in cases where articles of incorporation are filed in the month of December, every corporation claiming exemption from the payment of the annual license tax prescribed by this statute must file with said board, at least thirty days before such license tax becomes due and payable, a written protest in which shall be set forth all facts and reasons upon which such exemption claim is made. Such protest shall contain a concise statement of the nature, character and manner of doing business by such corporation, together with any other data illustrating the method of doing such business and the places in which such business is transacted within this state. Such corporation shall furnish to said board such other or additional information as may be required by said board. Such application shall be sworn to by the president, secretary or general manager, or authorized agent of such corporation. Failure to protest in the manner and within the time herein prescribed shall constitute a waiver of all rights of exemption from said tax; *provided, however*, that the corporation license tax exemption board shall have the power, irrespective of such protests, to grant such exemption in the case of corporations mentioned in subdivision (e).

The provisions of this section with respect to filing written claim of exemption, shall not apply to educational, religious, scientific or charitable corporations, nor to corporations taxed under subdivisions (a), (b) and (c) of section fourteen, article XIII of the constitution of this state.

(g) *Tax Exemption Determined Before Filing Articles of Incorporation.*—Before filing a certified copy of the articles of incorporation of any domestic corporation in the office of the secretary of state, and before any foreign corporation files with the secretary of state the document or documents required by section one of this act, said articles of incorporation or said documents shall be submitted to said corporation license tax exemption

board, which board shall determine the question of whether such corporation is exempt, under any of the provisions of this act, from the license tax imposed hereby.

All claims or applications for exemption, under this and the preceding section, together with all evidence and proofs submitted therewith, shall be considered by such license tax exemption board, which shall determine the question of such exemption. The determination of such corporation license tax exemption board upon all questions of fact, with respect to such claims of exemption, shall be final and conclusive.

(h) *Notice of Time When Tax Payable.*—On or before the first day of December of each year the secretary of state shall mail a notice to every corporation subject to the tax imposed by this act, notifying such corporations of the time when such tax shall be due and payable, when delinquent, and of the penalties for delinquency and nonpayment. Immediately after the first Monday in February of each year the secretary of state shall mail a notice to every corporation subject to tax imposed by this act and which has failed to pay the same, notifying such corporation of its delinquency and the penalties therefor.

(i) *Notice of Suspension or Forfeiture.*—Within ten days after the Saturday preceding the first Monday in March of each year the secretary of state shall, by registered mail, notify every corporation subject to the tax imposed by this act and which has failed to pay the same, that such corporation has been recorded by him as a “suspended” or “forfeited” corporation in accordance with the provisions of this act, and that such suspension or forfeiture may be removed by complying with the provisions of this act. Mailing by the secretary of state to any corporation of any of the notices required by this section shall not be a jurisdictional prerequisite to the accrual of any forfeiture provided by this act, or to the suspension of the corporate powers of any delinquent corpora-



tion and the officers thereof hereinafter provided, nor be held to be an essential prerequisite to the imposition of such or any other penalties for delinquency and non-payment.

(j) *License Tax Lien*.—The license tax due from any corporation subject to the provisions of this act is a lien upon the real property of such corporation from and after the first day of January of each year and until paid or until the property is sold for the payment thereof. On or before the first Monday in April of each year the secretary of state shall make a list of all corporations subject to the tax imposed by or that should have been paid under this act and which have failed to pay the same, and transmit a certified copy thereof to each county clerk and county recorder in this state. Said county clerks and county recorders shall file such certified copies in their respective offices in such manner that the same shall be preserved in the form of a permanent record of such office and easily identified by and available to the public. Said copies so certified by the secretary of state and filed as herein provided shall, in the case of each corporation, state whether such corporation is a domestic or foreign corporation and specify the tax and penalties which each corporation has incurred for failure to pay the tax imposed by this act. Such certified copies so filed with either of said county officers, or any copy thereof certified by the secretary of state, shall be received in evidence in any court in lieu of the original record on file with the secretary of state and shall be prima facie evidence of the truth of all statements contained therein.

(k) *Rights of Domestic Corporations Suspended*.—After six o'clock p. m. of the Saturday preceding the first Monday in March in any year, the corporate rights, privileges and powers of every domestic corporation which has failed to pay the tax and money penalty for non-payment thereof imposed by this act shall, from and after said hour of said day, be suspended, and incapable of being exercised for any purpose or in any manner, except



to execute and deliver deeds to real property in pursuance of contracts therefor made prior to such time, and to defend in court any action brought against such corporation, until said tax with all accrued penalties, taxes and charges due to the state under this act and subdivision (d) of section fourteen, article XIII of the constitution, are paid as hereinafter provided.

(1) *Right of Foreign Corporations Forfeited.*—The right and privilege of every foreign corporation, subject to the provisions of this act, to transact intrastate business in this state shall, for failure to pay the tax and money penalty for nonpayment thereof imposed by this act, be forfeited at said hour of said day, and the secretary of state shall make a record of such forfeiture. In the case of foreign corporations such forfeiture may be relieved and the corporation's privilege to transact intrastate business in this state restored in the manner hereinafter provided. After said hour of said day and until such taxes, penalties and charges are paid, every person who attempts or purports to exercise any of the rights, privileges or powers of any delinquent domestic corporation except as permitted by this act, or, who transacts or attempts to transact any intrastate business in this state in behalf of any forfeited foreign corporation, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than two hundred fifty dollars and not exceeding one thousand dollars, or by imprisonment in the county jail not less than fifty days or more than five hundred days, or by both such fine and imprisonment. The jurisdiction of such offense shall be held to be in any county in which any part of such attempted exercise of such powers, or any part of such transaction of business was had or occurred. Every contract made in violation of this section is hereby declared to be void.

(m) *Application by Stockholder or Creditor to Restore Rights.*—All corporate powers, rights and privileges, suspended or forfeited under the provisions of this

act may be revived and restored to full force and effect upon application therefor by any stockholder or creditor thereof and upon payment of all accrued taxes and penalties due to the state under this act and subdivision (d) of section fourteen, article XIII of the constitution. In case the application for such revivor and restoration is not made during the year in which such suspension or forfeiture occurred, such application shall not be granted nor a certificate of revivor issued to such corporation until there is paid to the secretary of state in addition to the tax and money penalty due or that should have been paid the state for the year in which such suspension or forfeiture occurred, a sum of money, equal to the tax, without penalty, imposed or that should have been paid under this act during the year in which such suspension or forfeiture occurred, for each year succeeding said year in which such suspension or forfeiture occurred.

(n) *Controller's Certificate*.—Upon the payment of all such taxes and penalties, and upon payment of all other taxes due the state, the state controller shall issue a certificate under his seal evidencing such payment and restoration, which certificate, when recorded in the office of any county recorder, shall constitute a release of all existing liens for such taxes upon the property of such corporation. Each county recorder shall keep an index of all such controller's certificates recorded by him. Upon presentation of such controller's certificate of revivor to any county clerk said officer shall make a record thereof in his office in a book kept for such purpose. The record so made by said county clerk shall be prima facie evidence of the restoration to such corporation of all previously suspended or forfeited rights, powers and privileges unless it appears from the records in the office of such county clerk or of the controller or secretary of state that subsequent to the date of such certificate of revivor the powers of said corporation have been again suspended or its right to do intrastate business again forfeited.

(o) *No Dissolution Until Tax Paid.*—No court shall have jurisdiction to make or enter any decree of dissolution of any domestic corporation until all taxes and penalties due under this act shall have been paid.

(p) *Restoration of Rights Under Acts of 1905 and 1915.*—Any corporation which has heretofore failed to pay any license tax and penalty imposed under the provisions of the statutes 1905, and amendments thereof, or under the statutes 1915, and for such nonpayment suffered a forfeiture of the charter of such corporation or of the right to do business in this state, may be relieved of such forfeiture, or may be restored to its right to do business in this state, upon making application therefor in writing and paying the license tax and penalties for nonpayment of which such forfeiture occurred. Application for restoration shall be made in writing, shall be signed by four-fifths of the surviving trustees or directors of said corporation, duly verified by said trustees or directors, and filed with the state controller. Upon payment of the moneys due this state under the provisions of said act for the one year in which such forfeiture occurred, together with any tax levied in such year by the state board of equalization, and the license tax due under the provisions of this act, the state controller shall issue a certificate of revivor to such corporation, and thereupon such corporation is revived and its powers restored to full force and effect.

The revivor of a corporation shall be without prejudice to any action or proceeding, defense or right, which has occurred by reason of the original forfeiture.

(q) *Use of New Name.*—In case the name of any corporation which has suffered forfeiture has been adopted by any other corporation since the date of said forfeiture, or in any case any corporation has adopted subsequent to such forfeiture any name so closely resembling the name of such reviving corporation as will tend to deceive, then such reviving corporation shall be entitled to a certificate



of revivor only upon the adoption by such corporation seeking revivor of a new name, and in such case nothing in this law contained shall be construed as permitting such reviving corporation to carry on any business under its former name. Such reviving corporation shall have the right to use its former name or take such new name only upon filing an application therefor with the secretary of state, and upon the issuing of a certificate to such corporation by the secretary of state, setting forth the right of such corporation to take such new name or use its former name as the case may be. The secretary of state shall not issue any certificate permitting any corporation to take or use the name of any corporation heretofore organized in this state and which has not suffered a forfeiture under either of the acts in this section first above mentioned, or to take or use a name so closely resembling the name of any corporation heretofore organized in this state as will tend to deceive.

(r) *Surrender of Right to Engage in Intrastate Business.*—Any foreign corporation may surrender its right to engage in intrastate business in this state by filing with the corporation license tax exemption board an affidavit, sworn to by the president of such corporation, which shall contain a concise statement of the nature, character and manner of doing any business of any kind that such corporation may thereafter intend to transact in this state. Said corporation shall furnish such other or additional information as may be required by said board. Said board shall consider such application, and the order of such board approving the same shall terminate the right of such corporation to transact intrastate business in this state. Any person transacting any intrastate business in this state in behalf of such corporation after approval of such application to surrender such privilege shall be guilty of a misdemeanor and punishable as provided in this act.

(s) *False Statement.*—Any false statement contained in any of the affidavits herein required shall constitute



Section 942, page 707, "Business Law for Business Men"—ISSUE OF STOCK TO EMPLOYEES—In all cases and subject to the manner in which corporations are authorized by existing laws to issue or sell shares of their capital stock any corporation may, with the consent of the stockholders under such restrictions as they shall impose, issue by way of additional compensation, or pursuant to sale, shares of its capital stock, whether of an original or of an increased issue, to employees of the corporation and to persons actively engaged in the conduct of its business, or to trustees for such employees or persons; and if such issue be pursuant to sale, such corporation may provide for payment for such stock in installments or at one time, and may provide for aiding such employees or such persons in paying for such stock by contributions, compensation for services, or otherwise, with or without the right to vote thereon, pending issue thereof, or payment thereof in full. Such consent may be given by the written assent or assents of stockholders holding two-thirds of the subscribed or issued capital stock, which assent or assents must be filed with the secretary of the corporation, or by a vote of stockholders holding two-thirds of the subscribed or issued capital stock of the corporation, at a regular stockholders' meeting, or at a special meeting for that purpose.

Any corporation may provide in its articles of incorporation or by-laws, at the time of organizing the corporation, for the issue of stock to its employees or persons actively engaged in the conduct of its business, as hereinbefore provided.

Act of the Legislature of California, approved April 2, 1921; in effect June 2, 1921.



perjury, and shall be punishable as such.

Act of the Legislature, approved May 11, 1917;  
in effect May 11, 1917.

Section 940.—**DUPLICATE OF LOST CERTIFICATE.**—Whenever a certificate of stock in a California corporation is lost or destroyed, the owner may bring an action against the corporation, in the Superior Court of the county in which its principal place of business is located, for the purpose of obtaining a new or duplicate certificate.

Statutes of 1905, page 500.

Section 941.—**CORPORATIONS TO LOAN MONEY ON CHATTEL MORTGAGES.**—A corporation may be organized for the sole purpose of loaning money upon the pledge of goods and chattels. Such corporation must have a capital stock of \$50,000, or over, and all the capital stock must be actually subscribed, and at least 50 per cent actually paid in, before any business is transacted.

Statutes of 1905, page 711.

Section 942.—**CAPITAL STOCK.**—The law provides that all corporations for profit in California must issue certificates for stock when fully paid up, signed by the president and secretary, and may provide in their By-Laws for issuing certificates prior to the full payment, under such restrictions and for such purposes as their By-Laws may provide. The corporation must keep an account of its stock, by whom owned, and the amount of subscriptions unpaid. It may issue its stock and commence business before subscriptions are all paid up, and even before the stock is all subscribed for. The capital stock is the fund upon which the corporation does business, and is the sole basis of its credit. Therefore, no corporation can issue stock, except for money paid, labor done, or property actually received, and all fictitious increase of stock is declared by the law to be void.

Constitution of California, Article 12, Section 11; Civil Code, Section 323.

**Section 943.—AMOUNT OF SUBSCRIBED CAPITAL TO BE PAID IN.**—It is only in the case of particular corporations that the law requires a certain amount of the subscribed capital stock to be paid in when the corporation is formed. As a general rule there is no requirement on the subject. Any certificate issued prior to full payment must show on its face what amount has been paid thereon.

**Section 944.—STOCKHOLDERS AND MEMBERS.**—Certain corporations are not required to have any capital stock, and a person associated with others in such a corporation is called a member. The holder of shares in a corporation having a capital stock is called a stockholder.

**Section 945.—SHARES OF STOCK.**—Whenever the capital stock of a corporation is divided into shares, and certificates have been issued, such shares of stock are personal property.

**Section 946.—PREFERRED AND COMMON STOCK.**—A corporation may issue two classes of stock—preferred stock and common stock. If the two kinds are to be issued, the Articles of Incorporation must provide for the classification, and must contain a statement of the number of shares of preferred stock, and the number of shares to which no preference is given. The Articles of Incorporation must also state, clearly and without evasion, the nature and extent of the preference granted to one class of the stock, and except as so declared there shall be no preference; and there can be no distinction between owners of the two classes of stock as to voting power and liability of stockholders.

**Section 947.—SUBSCRIPTION FOR STOCK.**—When a corporation is formed, and a person subscribes for a certain number of shares, by such subscription he becomes the owner of the stock; and it is not essential to create his rights as owner that the certificate should actually be



issued to him. The other incorporators or promoters cannot, after a person has become a subscriber for stock, arbitrarily say, "We will not issue the stock to him," and thus avoid the binding force of the subscription; nor can the subscriber himself say, where the parties have acted in good faith, "I have changed my mind; I will not take the stock." By the subscription merely, the subscriber becomes bound to accept and pay for the shares he has subscribed for. And to guard against any imposition upon those who have subscribed for stock, the law provides that a subscription for capital stock cannot be rescinded or canceled, except for fraud or mistake, without the unanimous consent of all the stockholders. What mistakes, or what acts of fraud in the organization of a corporation, would entitle any party to demand that a subscription for stock be canceled, must depend upon the peculiar facts of each case. If a party were induced by false statements or intentional misrepresentations, concerning material matters connected with the proposed corporation, to subscribe for its stock, this would be a fraud upon him for which he could demand that his subscription be canceled. But, whatever the rights of the subscriber might be in the courts, the corporation itself can never cancel a subscription for stock without first having the unanimous consent of all the stockholders. (Decided by the Supreme Court in the case of *Pacific Fruit Company vs. Coon*, which decision is printed in Volume 107 of the *California Reports*, page 447.)

Section 948.—**COMPROMISE WITH SUBSCRIBER FOR STOCK.**—Where subscribers to the capital stock of a corporation by reason of great financial loss and damage are unable to take and pay for the whole amount of their subscription, the board of directors of the corporation have authority to compromise the matter by releasing them from their subscription to the extent of one-half of the number of shares subscribed for, in consideration of their acceptance and payment for the remainder. The

general rule is, that a subscriber to stock of a corporation cannot be released from the obligation of his contract without the consent of his fellow stockholders and the creditors of the corporation. The reason for the rule is found in the doctrine, which views the subscribed capital stock of a corporation, both paid and unpaid, as a trust fund which the stockholders and creditors have the right to insist shall not be reduced or diminished or impaired except with their consent. In considering the application of the rule, however, it must be kept in mind that the creditor of a corporation is not a direct party to the contractual relation entered into between the corporation and a subscriber to its capital stock, and the creditor's rights do not extend so far as to permit him to interfere and prevent a stockholder from altering his relation toward the corporation with respect to his membership therein as a holder of its shares.

A solvent stockholder may make a valid agreement with the corporation, securing first the consent of all the other stockholders thereto, for his release from his subscription contract. Such an agreement will not prevent existing creditors from having recourse against the retiring stockholder upon his statutory liability. Express authority given by the charter or by-laws of the corporation, is essential, however, to the execution of such an agreement by the board of directors of a corporation.

While the power in the stockholders of a corporation to accept a surrender of the shares of a subscriber may not be exercised by the board of directors in the absence of express authority given them by the charter or by-laws, an exception is recognized to the extent that the directors may make compromises with insolvent or irresponsible subscribers. Such compromises usually take the form, that in consideration of the subscriber paying for a portion of the shares agreed to be taken, he is released, so far as the corporation is concerned, as to liability for the remainder. (Decided by the District Court of Appeals in the case of *Thomas vs. Wentworth Hotel Company*, which

decision is printed in Volume 12, California Appellate Decisions, page 834.)

Section 949.—TRANSFER OF SHARES OF STOCK.—Shares of stock in a corporation are transferred by indorsement and the delivery of the certificate. The indorsement is made by the signature of the owner, his agent, attorney, administrator, or executor. The transfer thus made, by indorsement and delivery, and nothing more, is valid between the parties to it. But to make such a transfer good as to third parties, something more is required; the transfer must be entered upon the books of the corporation, so as to show the names of the parties by whom and to whom transferred, the number of the certificate, the number of shares, and the date of the transfer.

Civil Code, Section 324.

Section 950.—TRANSFER OF STOCK HELD BY NON-RESIDENT.—The officers of a corporation are not bound to enter on its books any transfer of its shares owned by parties residing out of the State, and are not bound to issue a certificate to the transferee, unless the person claiming under the transfer, or the attorney or agent of the non-resident, makes an affidavit or produces other satisfactory evidence that the non-resident owner was alive at the date of the transfer; and if this affidavit is not made or evidence of such fact produced, the corporation may require an indemnity bond, with two sureties, conditioned to protect the corporation against any liability to the estate of the owner of the shares, in case of his being in fact dead before the transfer; and if neither the affidavit nor other evidence, nor the indemnity bond, is furnished when required, the corporation and its officers will not be liable for refusing to enter the transfer on the books.

Civil Code, Section 326.

Section 951.—TRANSFER OF STOCK HELD BY MARRIED WOMAN.—Shares of stock in corporations held by or

owned by a married woman may be transferred by her, or her agent or attorney, without the signature of her husband, by indorsement and delivery of the stock.

Civil Code, Section 325.

Section 952.—VOID CERTIFICATES.—It is unlawful for any corporation in California to issue stock except for money paid, labor done, or property actually received. Stock cannot be lawfully issued without such consideration, and all certificates issued by any corporation in violation of this provision of the law are void.

Civil Code, Section 359.

Section 953.—REMEDY AGAINST CORPORATION REFUSING TO REGISTER TRANSFER OF STOCK.—If the officers of a corporation refuse to register a transfer of stock on its books, the person to whom the stock has been transferred may lawfully treat such refusal as a conversion of the shares by the corporation. He may then sue the corporation and obtain a judgment for the value of the stock at the time of the refusal to register the transfer, with interest at seven per cent per annum from that time.

Civil Code, Section 3336.

Section 954.—CERTIFICATES OF STOCK ARE NOT NEGOTIABLE.—Certificates of stock in a corporation are not negotiable, in a commercial sense. They are mere evidences of the holder's title to a given share in the property and franchises of the corporation of which he is a member. Consequently, if a corporation issues to an owner of shares of stock a certificate transferable on the books of the company by indorsement and surrender of the certificate, and he indorses the same and then loses it, and it comes into the hands of a bona fide purchaser for value, such purchaser acquires no right to the stock. (Decided by the Supreme Court in the case of *Sherwood vs. Meadow Valley Mining Company*, which decision is printed in Volume 50 of the California Reports, page



412.) In the case cited, the language of Parsons on Contracts is referred to, where he says: "The result would seem to be that all corporation bonds and government stocks, which pass by delivery, or indorsement with delivery, are negotiable; but that certificates of stock in a corporation are not."

Section 955.—WHEN CORPORATION CANNOT CLAIM ITS OWN STOCK INVALID.—A corporation is precluded from setting up the claim that its own stock is invalid, or not issued according to law, where the rights of a bona fide purchaser are involved. So it has been held that, where a corporation issues capital stock, and represents it as fully paid and causes it to be so listed on the stock and bond exchange, the law will deny it the right to claim that the stock is invalid, as against a bona fide purchaser, even if the stock was in fact issued without consideration. (Decided by the Supreme Court in the case of *Smith vs. Martin*, which decision is printed in Volume 135 of the California Reports, page 247.)

Section 956.—REMEDY AGAINST CORPORATION FOR REFUSING TO RECOGNIZE STOCKHOLDER.—If the corporation refuses to recognize the lawful holder of stock as a stockholder, or refuses to deliver to him a new certificate, or to register him on its books, he has two remedies. He may sue in the Superior Court and compel the corporation to recognize him as a stockholder, by registering him upon its books and delivering to him a new certificate; or, he may sue the corporation for damages, on the ground that by its refusal it has been guilty of a conversion of his stock. These remedies are given not only to the real owner of the stock, but also to others, as the pledgee, the guardian, or the administrator. (Decided by the Supreme Court in the case of *Herbert Kraft Company Bank vs. Bank of Orland*, which decision is printed in Volume 133 of the California Reports, page 64.)

**Section 957.—MORTGAGE OF SHARES OF STOCK.**—The statute law declares what personal property may be mortgaged in California. Other personal property, however, may be mortgaged, and the mortgage will be good as between the parties to it. Shares of stock in a corporation are personal property. A mortgage of shares of stock may be made, which is valid and binding between the parties, and without delivery of possession of the certificate of stock. Such a mortgage is void as to creditors and subsequent purchasers in good faith for a valuable consideration; but where no such persons are complaining, the mortgage is good between the parties to it.

**Section 958.—SEAL OF CORPORATION.**—Every corporation must have a seal, but it need not be used upon every occasion. Corporations, like individuals, may appoint agents, and make most of the contracts which fall within their general powers, without the use of a seal.

**Section 959.—DEED WITHOUT CORPORATE SEAL.**—In a suit involving the validity of the deed of a corporation, executed without the corporate seal by persons signing as Directors, one who claims under such deed must show affirmatively that the deed was authorized by a resolution of the Directors entered on the records of the corporation, or that it was ratified by such resolution. (Decided by the Supreme Court in the case of *Barney vs. Pforr*, which decision is printed in Volume 117 of the California Reports, page 56.)

**Section 960.—WHAT REAL ESTATE MAY BE HELD BY CORPORATION.**—A corporation may hold indefinitely any real estate necessary to be used by it in the conduct of its legitimate business; but the Constitution of California provides that no corporation shall hold for a longer period than five years any real estate, except such as may be necessary for carrying on its business. Therefore, if a corporation acquires any real estate, in any manner,

which is not necessary in carrying on its business, it must sell such real estate within five years after the title is vested in it; and if it does not do so, the Attorney-General may bring a suit against the corporation, in the name of the people of the State, to compel it to sell the land.

Constitution of California, Article 12, Section 9.

Section 961.—CORPORATION MUST KEEP WITHIN OBJECT OF ITS CREATION.—It is one of the cardinal principles governing the conduct of a corporation that it must keep within the purposes and objects for which it was organized. If organized to carry on a particular business, it cannot engage in another. So, if a corporation formed to do a banking business should engage in insurance, the latter business would be outside of its legitimate object, and its acts in that business would have no validity. So far has this principle been carried in California, our Supreme Court has said that a contract of a corporation, outside of the object of its creation as defined by the law of its organization, and therefore beyond the powers conferred upon it by the Legislature, is not voidable only, but wholly void and of no legal effect. The objection to such a contract is not merely that the corporation ought not to have made it, but that it could not make it.

Section 962.—VOID CONTRACT CANNOT BE RATIFIED.—A contract which is absolutely void, because outside of the objects of the corporation, cannot be ratified. The contract cannot be ratified by either party to it, because it could not have been authorized by either. No performance on either side can give a void contract any validity, or be the foundation of any right of action upon it. (Decided by the Supreme Court in the case of Chemical National Bank vs. Havermal, which decision is printed in Volume 120 of the California Reports, page 53.)

Section 963.—WHEN CORPORATION BOUND BY ITS OWN INVALID ACT.—While an absolutely void contract cannot

be ratified, yet corporations are often bound by their own invalid acts, as where the Directors have done an act without their lawful power, but the corporation has retained the benefits and still enjoys the fruits of the transaction. In such a case, the corporation is not permitted to deny the validity of its own act, although it was irregular or invalid. This rule is illustrated by a decision of the Supreme Court, where a promissory note was irregularly executed by the president and secretary of a corporation, and upon being sued on the note, the corporation, without returning or offering to return the money received from the lender, denied the validity of the note and attempted to repudiate it. The Supreme Court said: "Assuming that the contract was outside its power, the law does not allow a corporation to retain the benefits which it has received from the contract and escape liability upon it. The invalidity of a contract is subject to the equitable exception that, although a corporation in making a contract acts in disagreement with its charter, where it is a simple question of capacity or authority to contract, arising either on a question of regularity of organization, or of power conferred by the charter, a party who has had the benefit of the agreement cannot be permitted, in an action founded upon it, to question its validity. It would be in the highest degree inequitable and unjust to permit the defendant to repudiate a contract the fruits of which he retains. The exception referred to is founded upon the fact that the contract, though invalid, has been executed in the interests of the corporation, and for its benefit and advantage. Where, therefore, it has received the fruits of such a contract, it cannot refuse payment on the ground that it had no power to contract. It would be otherwise if the contract had not been executed." (Decided by the Supreme Court in the case of *Main vs. Casserly*, which decision is printed in Volume 97 of the California Reports, page 127.)



Section 964.—NOTICE TO CORPORATION.—The president is the proper person to whom notice, which is to affect a corporation, is to be given. The corporation has no eyes, ears, or understanding, save through its agents. The president is considered the head of the corporation, and it is his duty to report to the directors information affecting the interests of the corporation. Therefore, notice of any matter, given to the president, is notice to the corporation.

Section 965.—LEASE OF FRANCHISE.—Where a corporation secures a franchise, by municipal grant, to operate gas and electric works, and to supply the inhabitants of the city with the product, it cannot lawfully lease its works and privileges to another, and such a lease, when made, is against public policy and void. The reason for this is, a franchise is a personal privilege, and can never be assigned without the consent of the grantor. (Decided by the Supreme Court in the case of Visalia Gas and Electric Light Company vs. Sims, which decision is printed in Volume 104 of the California Reports, page 326.)

Section 966.—MORTGAGE OF CORPORATION PROPERTY.—The president has not the power by virtue of his office to mortgage the property of the corporation. Nor has the secretary such power by virtue of his office. Nor have both together the power which neither has separately, nor have the stockholders such power. The powers of a corporation must be exercised, and its property controlled, by its board of directors, the decision of a majority of the directors, when lawfully assembled, being valid as a corporate act. A mortgage of the corporation property can only be made by authority of a resolution of the board of directors, adopted by a majority vote, at a meeting lawfully held, and the transaction recorded in its minutes. If there is no resolution

of the board of directors authorizing it, a mortgage of the corporation's property, though executed by the proper officers, is illegal and invalid.

Section 967.—**ASSIGNMENT OF ACCOUNTS.**—In the conveyance of real estate, and the encumbrance of corporation property by mortgage, corporations are held to much narrower rules than apply to the transaction of its ordinary business affairs. It is not contemplated that the Board of Directors shall meet upon every occasion when a contract is to be made, or other act done, in the ordinary conduct of the business of the company. Therefore, the president or general manager of a corporation has power to assign its book accounts for collection, where the assignment is in the ordinary course of its business, and known to and acquiesced in by the directors, and such a transaction as the officers have been in the habit of doing; and such assignment under such circumstances will be valid without previous authorization by resolution of the board. The president or general manager may also have like authority to make assignments of notes held by the corporation, to its creditors, either in payment of or as security for the payment of the debt of the corporation, without express authority of the board of directors. (Decided by the Supreme Court in the case of Greig vs. Riordan, which decision is printed in Volume 99 of the California Reports, page 316.)

Section 968.—**LIABILITY OF PROMOTERS.**—A promoter is one who brings about the incorporation and organization of a corporation; who brings together the persons who become interested in the enterprise, aids in procuring subscriptions, and sets in motion the machinery which results in the formation of the corporation. A promoter occupies a position of confidence towards those whom he induces to enter into the enterprise. And if a promoter obtains property for the corporation, and transfers the property to the corporation for a sum which he falsely

represents to be the cost price, but which is really much more, he will be liable to the stockholders for the profit made by him through his deceit. And in all other matters a promoter must deal fairly and openly with his associates in the formation of a corporation.

Section 969.—WHAT IS A CORPORATION DE FACTO.—It sometimes happens that, in the formation of a corporation, many of the acts required to be performed in order to make a complete organization may have been irregularly performed, or some of them may have been entirely omitted; yet, if the company has proceeded, claiming in good faith to be a corporation under the laws of California, and is doing business as such corporation, a party with whom it transacts business, and who accepts the benefit of its acts, cannot deny the validity of its incorporation. For it is termed a corporation de facto, a company in fact doing the business in good faith for which it was designed, although not organized strictly in accordance with law.

Section 970.—WHO MAY QUESTION THE VALIDITY OF A CORPORATION.—The question of the due incorporation of any company claiming in good faith to be a corporation under the laws of this State, and doing business as such corporation, or of its right to exercise corporate powers, cannot be inquired into, collaterally, in any private suit to which such de facto corporation may be a party. The State alone, through its Attorney-General, has power to bring a suit to test the right of such a corporation to exercise corporate powers.

Section 971.—DENIAL THAT A CORPORATION EXISTS.—It does not follow, because the State alone can question the validity of a corporation or its right to exercise corporate powers, when the company claims in good faith to be a corporation and is doing business as such, that an individual is never permitted to deny the corporate

existence. For it is true that, whenever a corporation brings a suit in the courts of this State, it must allege that it is a corporation, and the defendant may deny the fact, and then the corporation must prove it. And if it should appear that a body of men had met and declared that they constituted themselves a corporation, but neither subscribed to the capital stock, nor adopted Articles of Incorporation, nor appointed the officers, nor performed any act in the organization of the corporation required by law, nor transacted any business as a corporation—in such a case the court would declare, even in a suit between private parties, that there was no incorporation and no right to exercise corporate powers.

Section 972.—STOCKHOLDER'S RIGHT TO INSPECT BOOKS AND RECORDS.—The stockholder is interested in all the affairs and management of the corporation. He is, in one sense, a part owner of the assets, his part being represented by the number of shares owned by him. The law of California, recognizing the necessity for an inspection by the stockholder of the books and records, whenever he desires to do so, has provided that all corporations for profit must keep a record, among other things, of all their business transactions; and that such records shall always be open to the inspection of any director, member, or stockholder. It is the legal right of the stockholder to inspect, and the duty of the officers to allow him to inspect, at all times, the books and records of the corporation.

Constitution of California, Article 12, Section 14; Civil Code, Section 377.

Section 973.—MOTIVES OF STOCKHOLDER IN MAKING EXAMINATION OF BOOKS.—The motives of the stockholder in demanding the right to make an examination of the books of the corporation will make no difference. He may not really have any specific interest at stake, rendering his inspection necessary; there may be no bene-



ficial purpose on his part for which the examination is desired; he may wish to enforce a mere naked right, or to gratify mere idle curiosity; his motives may in fact be improper, and he may be seeking to gain information of a secret nature with the object of furnishing it to a rival company or corporation, to the injury and damage of the corporation whose books he examines; but none of these facts, if they exist, will be a legal excuse for refusing to allow a shareholder, however small his interest, to examine the books and records of the corporation. The shareholder is not required to show any reason or occasion for making the examination, nor can he be met with the defense that his motives are improper. (Decided by the Supreme Court in the case of *Johnson vs. Langdon*, which decision is printed in Volume 135 of the *California Reports*, page 624.)

Section 974.—LIABILITY OF STOCKHOLDER FOR FURNISHING INFORMATION TO RIVAL CORPORATION.—When it becomes known to the officers of a corporation that a stockholder has made an examination of the books with an improper motive, and that he has furnished information thus obtained to a rival corporation or company, the corporation he has so injured and damaged is not left by the law without a remedy. The guilty stockholder cannot be enjoined from inspecting the books, nor can the books be lawfully closed to him. But, by thus obtaining and disclosing information, he becomes liable in damages to the corporation, and the corporation can recover a judgment against him for all the damages which are occasioned to it by his conduct. True, he may not be financially able to pay the amount recovered, and the judgment, when obtained, may be worthless; but the law does not take these matters into account; and a suit for damages is the only remedy a corporation has against its own stockholder who examines its books with an improper motive and for the purpose of injuring it.

Section 975.—REMEDY OF STOCKHOLDER WHEN INSPECTION OF BOOKS IS REFUSED.—If a stockholder applies to the officer, generally the secretary, in charge of the books, and demands the right to make an examination, his remedy upon refusal is to apply to the Superior Court of the county for a writ of mandate. The shareholder has a right to be fully informed as to the conditions of the corporation, the manner in which its affairs are conducted, and how the capital to which he has contributed is employed and managed. And if an examination of the books is refused him, upon showing this fact in a petition to the Superior Court, together with the fact that he is a stockholder, the law requires the court to issue a writ commanding the officers of the corporation to open its books, records, and journals to his examination and inspection.

Section 976.—LIABILITY OF STOCKHOLDER FOR CORPORATION DEBTS.—The law of California imposes upon each stockholder the burden of paying the debts of the corporation. Each stockholder is individually and personally liable for such proportion of the debts of the corporation as the amount of stock owned by him bears to the whole of the subscribed capital stock. That is, if a person owns shares of stock to the amount of \$10,000, and the subscribed capital stock is \$100,000, he will be individually and personally liable for the one-tenth part of the debts of the corporation. It will make no difference in his liability whether the subscriptions have been paid in or not; for his proportion is measured, not by the capital actually paid in, but by the capital stock subscribed. If debts or claims are owing by or presented to a corporation, the stockholder is liable only for his proportion of such debts or claims. It will make no difference, either, whether the corporation is a domestic or foreign corporation; the liability of their stockholders in California is the same. The liability of a stockholder is not released by any subsequent transfer of stock, and

such transfer will not free him from responsibility on account of a debt incurred by the corporation while he was a stockholder.

Civil Code, Section 322.

Section 977.—LIABILITY OF MEMBER WHERE THERE IS NO CAPITAL STOCK.—In corporations having no capital stock, each member is individually and personally liable for his proportion of its debts and liabilities. His liability is to be measured by a comparison of the amount of the debt with the number of members; and, therefore, if the corporation owes \$10,000, and there are ten members, each will be liable for the one-tenth part of the debt, or \$1,000.

Civil Code, Section 322.

Section 978.—PLEDGE OR TRUSTEE NOT LIABLE FOR DEBTS.—A person who holds stock as collateral security does not become, by reason of the pledge, liable for the debts of the corporation; but the pledgor remains liable as before the pledge. A person holding stock merely as a trustee does not become, in such representative capacity, liable for the debts of the corporation; but the person he represents as trustee is deemed the stockholder, as respects such liability.

Civil Code, Section 322.

Section 979.—WHEN LIABILITY OF STOCKHOLDER BEGINS.—The liability of a stockholder for the debts of the corporation begins when he acquires his stock. He is not liable for the debts of the corporation incurred before he acquired his stock. For instance, to make a stockholder liable to pay his proportion of the amount due on a note made by the corporation, it must appear that the debt for which the note was given was incurred since he became a stockholder. For if a corporation buys goods, before the stockholder acquires his stock, and afterwards makes its note for the amount, that stockholder is not

liable on the note, because it was made for a debt incurred prior to the time when he became a stockholder. The stockholder's liability begins with the creation of the original debt, and the debt must be incurred while he is a stockholder, and not before; for otherwise, he is not liable at all. (Decided by the Supreme Court in the case of *Winona Wagon Company vs. Bull*, which decision is printed in Volume 108 of the California Reports, page 1.)

Section 980.—FRAUDULENT TRANSFER.—The question sometimes arises whether, when a corporation becomes insolvent, and unable to pay its debts as they become due in the ordinary course of business, a stockholder can transfer his shares to another and thus be rid of liability for the debts of the concern. The Supreme Court, in the case of *Welch vs. Sargent*, said on this point: "Generally speaking, the law places no restriction upon the right of a stockholder of a corporation to transfer his stock, so long as the corporation is solvent. But after the corporation has become insolvent, and the stockholder knows this, a shareholder cannot transfer his stock to irresponsible parties so as to relieve himself from liability to the creditors." It matters not what his intention was, for he may have transferred the stock in good faith, yet the law will still protect the creditors of an insolvent corporation by holding such a transfer void as to them. (Decided by the Supreme Court in the case of *Welch vs. Sargent*, which decision is printed in Volume 127 of the California Reports, page 72.)

Section 981.—STOCKHOLDER MAY SUE OTHER STOCKHOLDERS.—A stockholder may sue other stockholders in the same corporation for their pro rata of a debt due him by the corporation. (Decided by the Supreme Court in the case of *Brown vs. Merrill*, which decision is printed in Volume 107 of the California Reports, page 446.)



Section 982.—ASSIGNEE OF CREDITOR MAY SUE STOCKHOLDERS.—The creditor of a corporation may assign his account for collection, and the assignee will have the right to sue the stockholders in his own name. It is no defense, in a suit against stockholders, that the assignee, instead of the original creditor, brings the suit to collect the amount of the debt.

Section 983.—CREDITOR'S RIGHT TO UNPAID SUBSCRIPTIONS.—Debts due to a corporation constitute a portion of its assets, and may be reached by creditors. Among these are unpaid subscriptions to stock. As to creditors, the corporation is presumed to have sought credit based on its supposed capital, actually paid in or due from its stockholders. As the supposed capital is the sole basis of credit, the stockholders, who are the real parties carrying on the business, must make the representation as to its capital good; and a corporation cannot release the obligations of stockholders to pay up its unpaid subscriptions, and thus evade the payment of creditors. And the creditors may bring a suit to collect the unpaid balance due on stock of a corporation which has become insolvent.

Section 984.—WITHIN WHAT TIME SUIT AGAINST STOCKHOLDER MUST BE COMMENCED.—A suit against a stockholder by a creditor of a corporation must be commenced within three years after the cause of action accrues. If a corporation owes a debt, and the creditor wishes to sue a stockholder for his proportion of the amount due, he must sue within three years after the debt was created, or the liability of the stockholder will be barred. And in this connection it has been decided that the liability of the stockholder cannot be renewed or extended by any renewal or extension of the indebtedness which the creditor may make with the corporation. (Decided by the Supreme Court in the case of Hyman vs. Coleman, which decision is printed in Volume 82 of the

California Reports, page 650.) The liability of the stockholder is created and exists by statute. The liability arises when a debt is contracted by the corporation. The liability is limited to three years from the time it arises, and the corporation has no power to extend that limitation without direct authority from the stockholders. Therefore, if a debt is owing to a corporation, and the corporation afterwards takes a note from the debtor, the liability of the stockholder does not begin when the note is given, but dates back to the time when the debt was created. (Decided by the Supreme Court in the case of Hunt vs. Ward, which decision is printed in Volume 99 of the California Reports, page 612.)

Code of Civil Procedure, Section 359.

Section 985.—WHEN LIABILITY OF STOCKHOLDER IS SATISFIED.—Each stockholder has a several liability, and that liability is proportionate to the amount of his stock; and when he has paid his portion of any debt, or of all the debts of the corporation, he is freed from all liability on that account.

Section 986.—LIABILITY OF STOCKHOLDERS IN DISTILLERY FOR FEDERAL TAXES.—Every stockholder in a corporation possessing a still, distillery, or distilling apparatus, is individually and personally liable to the United States for the taxes imposed on the liquors distilled. His individual property, although in no way connected with the business of such corporation, may be seized and distrained for Federal taxes due on spirits produced by it. (Decided by the Supreme Court in the case of Richter vs. Blasingame, which decision is printed in Volume 110 of the California Reports, page 530.)

Section 987.—HOLDING PROPERTY IN OTHER COUNTIES. A corporation acquiring or holding property in a county other than its principal place of business must file in the office of the County Clerk of such county a certified copy

of its Articles of Incorporation. The copy must be certified by the Secretary of State.

Civil Code, Section 299.

Section 988.—WITHIN WHAT TIME CORPORATION MUST COMMENCE BUSINESS.—A corporation must organize, by the election of a Board of Directors, and must commence business, within one year from the date of its certificate of incorporation. If it does not do so, or, if organized for the construction of any particular works, it fails to commence the construction of its works within one year, any creditor may complain to the Attorney-General, who will begin a suit in the name of the State and have the Court declare the corporate existence forfeited and at an end.

Statutes of 1901, page 632.

Section 989.—LIABILITY OF PURCHASER OF SUBSCRIPTION STOCK.—A purchaser of stock of a corporation, in good faith and for a valuable consideration, from an original subscriber, who has not paid the full subscription price thereof, is liable for the unpaid subscription, where such non-payment appears from the books of the corporation, notwithstanding that he has no actual notice or knowledge of the same and it is represented to him by the president of the corporation and other sellers of stock that the same was fully paid for and it so appears on the face of the certificates. Such representation made by the president of a corporation are not binding upon it, without proof of express authority to make them, nor is the right of the corporation to require full payment of the subscription price affected by such representations made by the other original subscribers.

When the transferees of subscription stock cause the transfer to be recorded on the books of the corporation, they become liable for the unpaid subscription price thereof, and no express promise on their part to assume or pay the same is necessary.

In this State certificates of stock are not negotiable instruments, but mere evidence of the holder's right to a given share in the franchise and property of the corporation, and a purchaser takes them subject to all equities in favor of the corporation.

Unpaid subscriptions for stock are assets in bankruptcy, in the event of the insolvency of the corporation, and recoverable by the trustees.

The amount due from stockholders for subscribed stock is a trust fund for the creditors of the corporation, and such unpaid subscriptions are a part of its assets, and may be collected by its creditors.

(Decided by the Supreme Court of California, in the case of Perkins vs. Cowles, which decision is printed in Volume XXXIX of California Decisions, page 397.)

Section 990.—FAILURE TO ELECT OFFICERS.—If a corporation does organize within one year, but neglects and fails, for two years thereafter, to elect a President, Secretary, Cashier, or any necessary officers, and to transact in regular order the business for which it was incorporated, its corporate powers cease and it will be dissolved.

Statutes of 1901, page 632.

Section 991.—INCREASE OF CAPITAL STOCK.—A corporation may increase its capital stock, at any time, and the law provides what must be done when an increase of stock is desired. To increase the capital stock, a meeting of the stockholders must be called for that purpose by a resolution of the Directors. A notice must be published in a newspaper, once a week, for at least sixty days, stating that the object of the meeting is to vote on the question of increasing the capital stock; the amount to which it is proposed to increase the capital; and the time and place of holding the meeting. The meeting must be held at the principal place of business of the corporation and in the building where the Directors usually



meet. In addition to the notice by publication, the Secretary must also address a copy of the notice to each of the stockholders whose names appear on the company's books, at his place of residence, if known; and if the residence of the stockholder is not known, the notice must be addressed to him at the place where the company has its principal place of business; and the notice must be mailed to each stockholder at least thirty days before the day appointed for the meeting. When the meeting takes place, two-thirds of the subscribed or issued stock must be voted in favor of the proposition to increase the capital stock, in order to carry it.

Statutes of 1903, page 347.

Section 992.—DECREASE OF CAPITAL STOCK.—The capital stock of a corporation may be decreased in either one of two ways. It may be decreased by a vote of the stockholders, at a meeting for the purpose, held in the same manner and after similar notice as a meeting for increase of stock. The notice must state the amount of the decrease proposed, and the proposed decrease must be carried by a vote representing at least two-thirds of the subscribed or issued capital stock. The law provides a second mode of decreasing the capital stock. A corporation may diminish its capital stock by the unanimous vote of its Board of Directors, at a regular meeting, or at a special meeting called for that purpose, and approved by the written assent of stockholders holding two-thirds of the subscribed or issued capital stock. The written assent of the stockholders must be filed with the Secretary. The Secretary, as soon as the resolution of the Directors is passed providing for the decrease, must send a copy of the resolution to each stockholder whose name appears on the company's books; he must send by mail, postage prepaid, addressed to the known place of residence of the stockholder, or to the principal place of business of the corporation, if the residence of the stockholder

is not known; and the copy of the resolution must be mailed to each stockholder at least thirty days before the certificate mentioned in the following section is made and filed. Within the thirty days any stockholder may file with the Secretary his dissent in writing. The capital stock cannot be decreased to an amount less than the indebtedness of the corporation.

Statutes of 1903, page 348.

Section 993.—CERTIFICATE OF INCREASE OR DECREASE OF CAPITAL STOCK.—If capital stock is increased or decreased by a vote of the stockholders, a certificate, signed and verified by the President and Secretary and a majority of the Directors, and with the corporate seal attached, must be filed in the office of the County Clerk, and a certified copy must be filed in the office of the Secretary of State. The certificate must show that all the requirements of the law have been complied with; also, the amount to which the capital stock has been increased or diminished; the amount of stock represented at the meeting, and the total vote in the affirmative, and the total vote in the negative; and the total number of subscribed or issued shares of capital stock of the corporation. If the stock is decreased by a vote of the Directors, a similar certificate must be filed, which must show, also, the total amount of stock represented by the written assents and the written dissents filed with the Secretary.

Statutes of 1903, page 349.

Section 994.—PAPER IN WHICH NOTICES MUST BE PUBLISHED.—When the by-laws of a corporation prescribe the paper in which notices of meetings of Directors or stockholders are to be published, such notices must be published in that paper. If the by-laws do not prescribe any particular paper, the Directors may select the paper in which the notices may be published.

Section 995.—ASSESSMENT OF STOCK.—The Directors of any corporation in California, after one-fourth of its

capital stock has been subscribed, may, for the purpose of paying expenses, conducting business, or paying debts, levy and collect assessments upon the subscribed capital stock.

Civil Code, Section 331.

Section 996.—AMOUNT OF ASSESSMENT.—The law provides generally that no one assessment must exceed ten per cent of the capital stock named in the Articles of Incorporation. To this general provision there are three exceptions, viz.: (1) If the whole capital of a corporation has not been paid up, and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock; or if a less amount is sufficient, then it may be for such a percentage as will raise that amount; (2) The Directors of railroad corporations may assess the capital stock in installments of not more than ten per cent per month, unless their Articles of Incorporation provide otherwise; and (3) the Directors of fire or marine insurance corporations may assess such a percentage of the capital stock as they deem proper.

Civil Code, Section 332.

Section 997.—ORDER LEVYING ASSESSMENT.—The assessment must be levied by an order of the Board of Directors. Every order levying an assessment must specify the amount thereof, to whom, and where payable; fix a day, subsequent to the full term of publication of the assessment notice, on which the unpaid assessments shall be delinquent, not less than thirty nor more than sixty days from the time of making the order levying the assessment; and a day for the sale of delinquent stock, not less than fifteen nor more than sixty days from the day the stock is declared delinquent.

Civil Code, Section 334.

Section 998.—LEVY OF ASSESSMENT.—The right to levy an assessment upon the capital stock of a corporation

can only be legally exercised in the manner provided by law or by the charter of the corporation.

(a) *Levy Must Be Made at Regular or Specially Called Meeting.*—An assessment upon the capital stock of a corporation can be levied only at a regular meeting or at a special meeting regularly called.

(b) *Adjournment of Time of Holding Regular Meeting by Minority of Directors to Future Day Not a Regular Meeting—Assessment Levied at Such Meeting Void.*—An assessment levied by a majority of a board of directors of a corporation in the absence and without the knowledge of the minority of the board, at a time to which the regular monthly meeting of the board had been adjourned by a minority of the board present on the day of the regular meeting, on account of the absence of a quorum, is void, as such meeting is neither a regular meeting nor a specially called meeting.

(c) *Directors' Meetings—Adjournment by Minority Unauthorized.*—There is no provision of the Code authorizing a meeting of the directors of a corporation to be adjourned by a minority, and such act is invalid under the express provision of Section 305 of the Civil Code.

(Decided by the California District Court of Appeals, in the case of *Raisch vs. M. K. & T. Oil Co.*, which decision is printed in California Appellate Decisions, Volume 6, No. 284, page 403.)

**Section 999.—NOTICE OF ASSESSMENT.**—A notice of the assessment must be published by the Secretary, once a week for four successive weeks, in a newspaper published at the principal place of business, if there be one, or, if there is none, then the notice must be published in some other newspaper in the county. If the principal place of business is in one county, and the works of the company in another, the notice must be published in both counties for the same length of time. Also, the notice must either be personally served upon each stockholder, or sent through the mail addressed to him. If the stock-



holder's address is known, the notice must be mailed there; but if the address is not known, it is sufficient to mail the notice to him at the principal place of business of the corporation.

Civil Code, Section 336.

Section 1000.—FORM OF NOTICE OF ASSESSMENT.—The notice of assessment, mentioned in the preceding section, must be substantially in the following form:

### NOTICE OF ASSESSMENT.

WILLITS STATE BANK.—Location of principal place of business, Willits, Mendocino County, State of California. Notice is hereby given, that at a meeting of the Directors, held on the.....day of....., 19....., an assessment of.....per share was levied upon the capital stock of the corporation, payable on the.....day of....., 19....., to the Secretary of said Willits State Bank, at his office in said bank in Willits, Mendocino County, State of California. Any stock upon which this assessment shall remain unpaid on the.....day of....., 19....., will be delinquent and advertised for sale at public auction, and, unless payment is made before, will be sold on the.....day of....., 19....., to pay the delinquent assessment, together with costs of advertising and expenses of sale.

.....  
Secretary.

Office at Willits State Bank, Main Street,  
Willits, California.

Section 1001.—HOW ASSESSMENT MAY BE ENFORCED.—The law provides two methods for the enforcement of the liabilities of stockholders to the corporation, by reason of assessment levied upon the capital stock—one by a sale of the stock for the delinquent assessment; the other by a suit against the stockholder to recover from

him the amount of the assessment. The Board of Directors has the option to adopt one or the other method of enforcing the payment of an assessment on stock lawfully levied.

Civil Code, Section 349.

Section 1002.—NOTICE OF SALE.—If any portion of the assessment remains unpaid, on the day named in the notice for declaring the stock delinquent, the Secretary must, if the Directors elect to have the stock sold, publish a notice of sale in the same paper in which the delinquent notice was published. The notice, when published in a daily paper, must be published for ten days, excluding Sundays and holidays, previous to the day of sale. When published in a weekly paper, it must be published in each issue for two weeks previous to the day of sale. The first publication of all delinquent sales must be at least fifteen days prior to the day of sale. The notice must specify every certificate of stock, the number of shares it represents, and the amount due thereon, except where certificates may not have been issued to parties entitled thereto, in which case the number of shares and amount due thereon, together with the fact that the certificates for such shares have not been issued, must be stated.

Civil Code, Sections 338, 339.

Section 1003.—FORM OF NOTICE OF SALE.—The following is a form of the notice of sale mentioned in the preceding section :

#### NOTICE OF SALE OF STOCK FOR DELINQUENT ASSESSMENT.

WILLITS STATE BANK.—Location of principal place of business, Willits, Mendocino County, State of California. Notice is hereby given, that there is delinquent upon the following described stock of the corporation, on account

of assessment levied on the.....day of....., 19....., the several amounts set opposite the names of the respective shareholders, as follows: (Here insert names, number of certificate, number of shares, and amount.) And in accordance with law, and an order of the Board of Directors made on the.....day of....., 19....., so many shares of each parcel of such stock as may be necessary will be sold, at public auction, at the office of the Secretary of said corporation, at the Willits State Bank, Main Street, Willits, Mendocino County, State of California, on the.....day of....., 19....., at 10 o'clock A. M. of that day, to pay delinquent assessments thereon, together with costs of advertising and expenses of the sale.

.....  
Secretary.

Office at Willits State Bank, Main Street, Willits, Mendocino County, State of California.

Section 1004.—WHO ARE LIABLE ON ASSESSMENTS.—For the purpose of ascertaining those who are liable to it for the amount of an assessment, a corporation can only look to the list of stockholders as their names are registered upon its books. Where an assignment of stock is made after the levy of an assessment, but no formal transfer is made on the books of the company, the assignor is still liable on the assessment. Where stock has been assigned, and a transfer of the stock has been duly made on the books of the company, the assignee becomes liable on assessments.

Section 1005.—EXTENSION OF TIME FOR PAYMENT AND SALE.—The dates fixed in any notice of assessment or notice of delinquent sale may be extended from time to time for not more than thirty days, by order of the Directors, or by the Secretary when a delinquent sale is restrained by a court, entered on the records of the corporation; but no order extending the time for the performance of any acts specified in any notice is effectual

unless notice of such extension or postponement is appended to and published with the notice to which the order relates.

Civil Code, Section 345.

Section 1006.—**SALE OF STOCK FOR ASSESSMENT.**—By the publication of the notice, the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice of sale upon which any portion of the assessment or cost of advertising remains unpaid at the hour appointed for the sale, but must sell no more of such stock than is necessary to pay the assessments due and costs of sale. On the day, at the place, and at the time appointed in the notice of sale, the Secretary must, unless otherwise ordered by the Directors, sell or cause to be sold at public auction, to the highest bidder for cash, so many shares of each parcel of the described stock as may be necessary to pay the assessments and charges thereon, according to the terms of sale; if payment is made before the time fixed for sale, the party paying is only required to pay the actual cost of advertising, in addition to the assessments. The person offering at such sale to pay the assessment and costs for the smallest number of shares or fraction of a share is the highest bidder, and the stock purchased must be transferred to him on the stock books of the corporation, on payment of the assessment and costs.

Civil Code, Sections 340, 341, 342.

Section 1007.—**PURCHASE OF DELINQUENT STOCK BY THE CORPORATION.**—If, at the sale of stock, no bidder offers the amount of the assessments and charges due, the same may be bid in and purchased by the corporation, through the Secretary, President, or any Director, at the amount of the assessments, costs, and charges due; and the amount of the assessments, costs, and charges must be credited as paid in full on the books of the corporation, and entry of the transfer of the stock to the corporation



must be made on the books. While the stock remains the property of the corporation, it is not assessable, nor must any dividends be declared thereon; but all assessments and dividends must be apportioned upon the stock held by the stockholders of the corporation. All purchases of its own stock made by any corporation vest the legal title to the stock in the corporation; and the stock so purchased is held subject to the control of the stockholders, who may make such disposition of the same as they deem fit, in accordance with the by-laws of the corporation or the vote of a majority of all the remaining shares. Whenever any portion of the capital stock of a corporation is held by the corporation by purchase, a majority of the remaining shares is a majority of the stock, for all purposes of election, or voting on any question at a stockholders' meeting.

Civil Code, Sections 343, 344.

Section 1008.—**SUIT TO RECOVER AMOUNT OF ASSESSMENT.**—On the day specified for declaring the stock delinquent, or at any subsequent time before the sale of the delinquent stock, the Board of Directors may order all such proceedings stopped, and may elect to sue the delinquent stockholders for their assessments. The stockholder is liable in the suit for the amount of the assessment, and for the costs and expenses incurred by the corporation in trying to collect it.

Civil Code, Section 349.

Section 1009.—**LIEN FOR ASSESSMENT.**—After an assessment has been made, a corporation has a lien for the payment of the assessment, which is not affected by the issuance of a new certificate and a transfer of the shares. The lien is upon the shares, and not upon the certificate. When an old certificate is surrendered, and a new certificate is issued, the new certificate represents the same shares; but the shares themselves remain subject to any lien the corporation may have upon them, and the new owner takes subject to such lien. The identity of the

stock is not affected by the transfer. The keeping of a stock book, in which the original issue and all subsequent transfers must be entered, enables the holder or purchaser to trace his shares back to the original issue by the numbers of the different certificates, and thus identify the shares upon which any assessment has been made, and enables him to ascertain with certainty, in connection with the other records of the corporation relating to assessments and delinquent sales, whether his shares are free from liens or liability in favor of the corporation; and in the same manner enables the corporation to enforce its delinquent assessment upon the shares liable therefor, no matter how many transfers have been made subsequent to the assessment; each transferee taking the legal title, but subject to the assessment, just as the grantee of the legal title to land takes it subject to all valid recorded liens. (Decided by the Supreme Court in the case of *Craig vs. Hesperia Land and Water Company*, which decision is printed in Volume 113 of the *California Reports*, page 7.)

**Section 1010.—TRUSTEE NOT LIABLE FOR ASSESSMENTS ON STOCK.**—Whenever shares of the capital stock of any corporation stand in the name of a trustee with the names of the beneficiaries of the trust disclosed thereon or whenever the corporation has notice that any of its shares of stock are held in trust, and has a list of the names of the beneficiaries of such trust, even though the certificate representing said shares is issued in the name of the trustee individually, and without any notice thereon of such trust, the person holding such stock as trustee shall not be personally liable for assessments made or levied by the corporation upon such stock, but such personal liability for stock assessments shall only be upon and against the beneficial owners of such stock or the beneficiaries of the trust of which such stock may constitute a part.

Act of the Legislature, approved May 7, 1919; in effect July 22, 1919.

Section 1011.—BY-LAWS OF CORPORATION.—Every corporation formed under the laws of California must, within one month after filing Articles of Incorporation, adopt By-Laws for the government of the corporation. The By-Laws adopted must not be inconsistent with the Constitution and laws of the State.

Section 1012.—HOW BY-LAWS ADOPTED.—The assent of stockholders, representing a majority of all the subscribed capital stock, or a majority of the members, if there be no capital stock, is necessary to adopt By-Laws, if they are adopted at a meeting called for that purpose. By-Laws may also be adopted, without a meeting for that purpose, by the written assent of the holders of two-thirds of the stock, or by the written assent of two-thirds of the members, if there is no capital stock. If a meeting of stockholders is called for the purpose of adopting By-Laws, notice must be given by publication in a newspaper for two weeks, by order of the acting President.

Civil Code, Section 301.

Section 1013.—WHAT BY-LAWS MAY PROVIDE FOR.—A corporation may, by its By-Laws, provide for the following things: (1) The time, place, and manner of calling and conducting its meetings, and may dispense with notice of all regular meetings of the stockholders or directors; (2) The number of stockholders or members constituting a quorum; (3) The mode of voting by proxy; (4) The qualifications and duties of directors, the time of their annual election, and the mode and manner of giving notice of such election; (5) The compensation and duties of officers; (6) The manner of election and the term of office of all officers other than the directors; (7) Suitable penalties may be provided for the violation of the By-Laws, not exceeding \$100 for any one offense; (8) The amount of stock to be owned by a director; (9) For the filling of vacancies on the board of directors; (10) For the issuing of certificates of stock before full payment therefor;

(11) For the disposal of stock owned by the corporation; and, (12) The By-Laws may specify the newspaper in which all notices of the meetings of stockholders or directors, when notice is necessary, shall be published.

Civil Code, Sections 301, 305, 308, 323, 344.

Section 1014.—BOOK OF BY-LAWS.—The law provides that all By-Laws adopted must be certified by a majority of the directors and secretary of the corporation, and copied in a legible hand, in a book kept in the office of the corporation, to be known as the “Book of By-Laws,” and no By-Law shall take effect until so copied, and the book shall then be opened to the inspection of the public during office hours of each day except holidays.

Civil Code, Section 304.

Section 1015.—AMENDMENT OF BY-LAWS.—The By-Laws can be amended by a vote of the stockholders at the annual meeting, or at a special meeting called for that purpose. There must be a vote representing two-thirds of the subscribed stock. The By-Laws may also be amended, without a meeting, by the written assent of the holders of two-thirds of the stock, or two-thirds of the members if there is no capital stock.

Civil Code, Section 304.

Section 1016.—REPEALING OLD AND ADOPTING NEW BY-LAWS.—Old By-Laws may be repealed absolutely, and new By-Laws adopted in their place, in the same manner as amendments are made, stated in Section 1015.

Section 1017.—RECORD OF AMENDMENTS.—The law provides that, “whenever any amendment or new By-Law is adopted, it shall be copied in the Book of By-Laws with the original By-Laws, and immediately after them, and shall not take effect until so copied. If any By-Law be repealed, the fact of repeal, with the date of the meeting at which the repeal was enacted, or written assent was filed,



shall be stated in said book, and until so stated the repeal shall not take effect.”

Civil Code, Section 304.

Section 1018.—THE BOARD OF DIRECTORS.—The corporate powers, business, and property of corporations must be exercised, conducted, and controlled by a Board of Directors.

Section 1019.—NUMBER OF DIRECTORS.—The law is, that the number of directors cannot be less than three, but may be any number more than three. The number of directors may be increased to more than three without limit, to as many as may be desired at any time after articles of incorporation have been filed, by a vote of the majority of the stockholders of the corporation; and if the corporation has been formed with more than three directors, a majority of the stockholders may vote to decrease the directors to any number not less than three. The increase or decrease of the number of directors must be at a meeting of the stockholders called for that purpose. When the number of directors has been increased or decreased, a certificate stating that fact must be filed in the same manner as articles of incorporation were filed.

Act of the Legislature, in effect May 18, 1907.

Section 1020.—QUALIFICATION OF DIRECTORS.—A majority of the directors must be citizens of California. Directors of corporations for profit must be holders of its stock to an amount fixed by the By-Laws of the corporation; directors of all other corporations must be members thereof.

Statutes of 1901, page 308.

Section 1021.—DIRECTORS FOR THE FIRST YEAR.—The directors to serve for the first year, or until the time fixed for the election of directors, are designated in the Articles of Incorporation; and the person named in the

Articles of Incorporation, upon the organization of a corporation, will serve until their successors are regularly elected.

Section 1022.—ELECTION OF DIRECTORS.—The directors of a corporation must be elected annually by the stockholders or members, and if no provision is made in the By-Laws for the time of election, the election must be held on the first Tuesday in June. There must be a majority of the subscribed capital stock, or of the members where there is no capital stock, represented at the meeting for the election of directors, either in person or by proxy in writing. The election must be by ballot, and every stockholder has the right to vote in person or by proxy the number of shares standing in his name, for as many persons as there are directors to be elected, or he may cumulate his shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal; or the stockholder may distribute his shares on the same principle among as many candidates as he shall think fit. These provisions of the law apply to all corporations doing business in this State, domestic or foreign. The director receiving the highest number of votes shall be declared elected. In corporations having no capital stock, each member of the corporation may cast as many votes for one director as there are directors to be elected, or he may distribute them among any or all the candidates.

Civil Code, Sections 302, 312.

Section 1023.—NOTICE OF MEETINGS.—Notice of meetings of the stockholders to elect directors must be given, by the Secretary, unless all of the stockholders waive such notice in writing. When all the stockholders or members of a corporation are present at any meeting, however called or notified, and sign a written consent thereto on the records of such meetings, or if those not present sign in writing a waiver of notice of such meeting, which

waiver is presented and made a part of the records of such meeting, the doings of such meeting are as valid as if had at a meeting legally called and noticed.

Act of the Legislature, approved February 22, 1909.

Section 1024.—WHO MAY VOTE AT ELECTION OF DIRECTORS.—To entitle a person to vote at the election of directors, he must be a bona fide stockholder, having stock in his own name on the stock books of the corporation at least ten days before the election. It is made a requisite of the right to vote that the voter shall not only be registered as a stockholder, but that he shall have been so registered for at least ten days prior to the election, and that he shall also be a bona fide stockholder at the time of the election. The voter must be either the owner of the stock, or have some other interest in it, in order to be a bona fide stockholder. Therefore, one in whose name stock has been registered upon the books of the corporation, but who has never had any interest in the stock, and is only a dummy for the real owner, and when the change on the books was made for the purpose of enabling the real owner to avoid his liabilities, is not a bona fide stockholder, within the meaning of the law, and should not be allowed to vote at an election of directors. (Decided by the Supreme Court in the case of *Smith vs. S. F. and N. P. Railway Company*, which decision is printed in Volume 115 of the California Reports, page 584.)

Civil Code, Sections 307, 312.

Section 1025.—WHO MAY VOTE STOCK IN HANDS OF PLEDGEE OR TRUSTEE.—All shares of stocks standing on the books of a corporation in the name of any person as pledgee or trustee, may be represented or voted by such pledgee or trustee, but only in case the pledgor or beneficial owner fails to represent and vote the same. It may be agreed, however, that the stock shall be voted in a different manner.

Act of the Legislature, approved March 9, 1911.

**Section 1026.—WHO MAY VOTE STOCK IN HANDS OF ADMINISTRATOR OR EXECUTOR.**—When the owner or pledgee is dead, he must be succeeded by his personal representative, that is, by his executor or administrator. In such case, the administrator or executor will have the right to have the stock transferred on the books of the corporation to him, and will be entitled to vote the stock. In the case of a trustee who dies, the law will not allow the trust to die with him, but will proceed to appoint another trustee to succeed him, and in this case the succeeding trustee will be entitled to have the stock transferred to him, and may vote it.

**Section 1027.—WHO MAY VOTE STOCK BELONGING TO MINOR.**—The guardian of a minor, the owner of stock in a corporation, is entitled to vote it.

**Section 1028.—WHO MAY VOTE STOCK BELONGING TO INSANE PERSON.**—The guardian of the estate of an insane person, the owner of stock in a corporation, is entitled to vote it.

**Section 1029.—VOTING BY PROXY.**—A stockholder may be represented at all elections by proxy. He may select any one he pleases as his proxy, to vote his stock, and the person selected by him need not himself be a stockholder. A corporation has no power to restrict the right of voting by proxy to certain persons, or to control their selection by the stockholders in any way, or to curtail in any other respect the right to vote by proxy. There was for a long time in California a custom among banking corporations to have a By-Law providing that no person not a stockholder would be allowed to vote as a proxy, but the Supreme Court has declared such a By-Law invalid, upon the ground that a corporation has no power to make or enforce it. The law places no restriction whatever upon the stockholder as to the person he shall be at liberty to select to act under his proxy; and a corporation has no



power to either qualify or limit the right to vote by proxy. (Decided by the Supreme Court in the case of Peoples Home Savings Bank vs. Superior Court, which decision is printed in Volume 104 of California Reports, page 649.) The law provides that every proxy must be executed in writing by the stockholder himself, or by his duly authorized attorney. A proxy is valid for eleven months after its date, unless the time, not exceeding seven years, is specified in it. Every proxy is revocable at the pleasure of the person executing it. The By-Laws may provide the mode of voting by proxy.

Civil Code, Section 312.

Section 1030.—ORGANIZATION OF BOARD OF DIRECTORS.—Immediately after their election, the directors must organize by the election of a President, a Secretary, and a Treasurer.

Civil Code, Section 308.

Section 1031.—DUTIES OF PRESIDENT, SECRETARY AND TREASURER.—The duties of the President, the Secretary and the Treasurer may be prescribed by the corporation in its By-Laws. They may be required to perform any duty consistent with the objects of the corporation and not inconsistent with the laws of the State.

Section 1032.—OTHER OFFICERS.—A corporation may appoint other officers than those named by the law, and prescribe what their duties shall be. Such officers may be provided for in the By-Laws, and appointed by the Board of Directors.

Section 1033.—QUORUM OF DIRECTORS.—A majority of the Board of Directors constitutes a quorum for the transaction of business. Unless a quorum is present and acting, no business performed, or act done, is valid, as against the corporation. No legal quorum of a Board of Directors is present when action is attempted to be taken

on a matter as to which one of the directors necessary to make the quorum is interested; and resolutions passed at such a meeting cannot be ratified by the stockholders.

Civil Code, Section 305.

Section 1034.—VOTE OF DIRECTOR ON MATTER IN WHICH HE IS INTERESTED.—A director of a corporation cannot legally vote or act upon any matter in which he is financially interested adversely to the corporation. By virtue of his position, he is disqualified from voting or in any mode acting in his official capacity as a director, for the purpose of creating an obligation in his own favor. So strictly is this principle adhered to by the courts, that no question is allowed to be raised as to the fairness or unfairness of the contract so entered into. A director must not participate in any act in which his personal interest is antagonistic to that of the corporation. Being interested in the subject-matter, the law does not allow him, as a director, to deal with himself, and thus be subject to the temptation to advance his own interests. The Supreme Court of California had under consideration a case where a director named Wells formed a part of a quorum, at a meeting of the board, which voted the execution of a mortgage on the property of the corporation to him; and the court held that the mortgage was invalid, saying: "The same rules which preclude an interested director from uniting with other directors in the creation of an obligation in favor of himself by his vote, forbid him from uniting with them in creating such obligation by any act or exercise of his official position; and a meeting at which there is not a majority of the directors, exclusive of such interested director, is not a competent board for the transaction of any corporate business. By reason of the disqualification of Wells from taking any part in passing the resolution for executing the note and mortgage to himself, he could neither vote in favor of the resolution, nor by his presence help to create a quorum by which the other two directors could adopt it. For the purpose of

any action upon this resolution, he was as much a stranger to the board as if he had never been elected a director; and, although he may have been physically present in the room with the other two directors, he was not for that purpose a competent part of the board, any more than would have been any other bystander, and there was not, therefore, a quorum of the board 'present and acting' at the time the resolution was adopted." (Decided by the Supreme Court in the case of Curtin vs. Salmon River Hydraulic Gold Mining Company, which decision is printed in Volume 130 of the California Reports, page 345.)

Section 1035.—REGULAR AND SPECIAL MEETINGS.—The time of holding the meetings of the Board of Directors may be fixed in the By-Laws, and the By-Laws may provide that no notice be given of regular meetings. Where a special meeting is called, for any purpose, all of the directors must be notified by the Secretary in the proper manner. If the meeting is special, and the directors are not all notified, the meeting is not duly assembled, and its action does not bind the corporation as a valid corporate act.

Section 1036.—PUBLICITY CANNOT MAKE ILLEGAL ACT OF DIRECTORS VALID.—The publicity alone of an illegal and unauthorized act of the directors of a corporation does not make it valid; and directors charged with doing an illegal act cannot defend it by saying that their act was open, and not secret.

Section 1037.—VACANCY IN BOARD OF DIRECTORS.—The By-Laws of a corporation may provide the manner in which a vacancy in the Board of Directors shall be filled. If the By-Laws make no provision for filling a vacancy, the Board of Directors must appoint a member to fill the vacancy.

Civil Code, Section 305.

Section 1038.—CAN A CORPORATION PERFORM CORPORATE ACTS, SUCH AS THE MORTGAGING OF ITS REAL PROPERTY, WHILE THERE IS A VACANCY IN ITS BOARD OF DIRECTORS?—This question was a new one in the United States prior to the year 1899. In that year the Supreme Court of California made a decision in a case where this question was directly raised, (where there was a vacancy in a board of five, and the remaining four members, without filling the vacancy, undertook to authorize a mortgage of the corporation's real estate), holding that a vacancy in the board does not prevent it from acting so as to bind the corporation, if there is a majority of a full board remaining. Chief Justice Beatty, giving the decision of the court, said on this subject: "The By-Laws of this corporation, and, I suppose, its Articles of Incorporation, provided for a board of five directors, and the question is whether during a vacancy in one of these directorships the four remaining directors could lawfully assemble for the transaction of any business except the filling of such vacancy. Counsel have not cited any case decided in this State or any other in the United States in which this question has been directly decided. It is no doubt true that directors owe to their constituents the duty of keeping the board full, by promptly filling vacancies as they occur; and this for the reason that shareholders are entitled to the benefit of the experience and advice of all the members of a full board in the transaction of all its business. When the directors violate this duty, there may be sound reasons for holding that they should not be allowed to take any advantage, as against the shareholders, of acts or resolutions passed when a full board was not in existence. But when the corporation is dealing with a stranger, who, acting in good faith and in ignorance of the existence of a vacancy in the board of directors, parts with his property on the faith of what he is induced to believe is a valid corporate obligation, the case is certainly very different in its substantial merits. The votes of a majority of a full board may authorize a corporate act, although there



may be a vacancy in the board.''' (Decided by the Supreme Court in the case of Porter vs. Lassen County Land and Cattle Company, which decision is printed in Volume 127 of the California Reports, page 661.)

Section 1039.—SERVICES OF DIRECTOR OUTSIDE OF HIS DUTIES AS SUCH.—Where a director of a corporation performs services as its manager, or in any other legitimate way, not pertaining to his duties as director, he is entitled to recover from the corporation the reasonable value of such services, though no rate of compensation was fixed by the board of directors prior to performance of the services. (Decided by the Supreme Court in the case of Bassett vs. Fairchild, which decision is printed in Volume 132 of the California Reports, page 631.)

Section 1040.—LIABILITY OF DIRECTORS FOR MONEY EMBEZZLED.—The directors of a corporation are individually and personally liable to its creditors for money embezzled by any of the officers of the corporation. This the Constitution of the State declares. But they are liable only to all the creditors, and one creditor cannot sue alone to recover his debt by reason of failure to pay when the funds of a corporation have been embezzled. All the creditors must be joined in such a suit, and the money recovered to the corporation from the directors will constitute a trust fund to be paid to all the creditors.

Section 1041.—ADVANCES OF MONEY BY DIRECTOR.—Where money is advanced to a corporation by a director, when the corporation is in debt and unable to obtain money from other sources, and such money is received and made use of in the business of the corporation, it will be liable to him for the repayment of the sum advanced.

Section 1042.—DIRECTORS IN TWO CORPORATIONS.—The fact that two corporations have the same directors, or that some of the directors in one are also directors in

the other, does not prevent the two corporations from dealing with each other. Where two corporations, through their Boards of Directors, make a contract with each other, the directors who are common to both are not within the rule which prohibits one who acts in a fiduciary capacity from dealing with himself. Two corporations have the right, within the scope of their chartered powers, to deal with each other; and this right is not destroyed by the fact that some, or even a majority, of the directors are common to both. Of course, if such directors should wrongfully use their powers to the prejudice of one of the corporations, their action could be set aside for fraud. But common directors owe the same fidelity to both corporations, and there is no presumption that they will deal unfairly with either; and therefore their acts as such common directors are not void.

Section 1043.—AUTHORITY OF PRESIDENT.—The President of a corporation may have more extensive powers conferred upon him than a strict interpretation of the law would show. The directors of a business corporation have power, by resolution, to give the President general authority to incur debts, negotiate loans, enter into contracts, and otherwise act as the agent of the corporation; and where a resolution of this kind is passed at a meeting of the directors, unless it is in direct conflict with the By-Laws, the President will have authority to do all such acts on behalf of the corporation as are mentioned in the resolution. (Decided by the Supreme Court in the case of McCormick vs. Stockton and Tuolumne County R. R. Company, which decision is printed in Volume 130 of the California Reports, page 100.)

Section 1044.—PRESIDENT MAY EMPLOY ATTORNEY.—The President of a corporation has power to employ an attorney, when the exigencies of his company require it. He need not obtain the consent of the directors or stock-

holders to do this. By virtue of his position as official head of the corporation he has the power to do so.

Section 1045.—DIVIDENDS.—The directors of a corporation cannot make dividends, except from the surplus profits arising from the business. The directors cannot withdraw, divide, or pay to the stockholders, or any of them, any part of the capital stock, while the corporation is a going concern.

Civil Code, Section 309.

Section 1046.—AGREEMENT TO DIVIDE CAPITAL STOCK AMONG STOCKHOLDERS VOID.—An agreement upon the part of a corporation to divide its whole capital stock among its stockholders, prior to its dissolution, is void.

Where a corporation wrongfully pays to some of its stockholders their proportionate share of the money received from the sale of the entire property of the corporation, the remedy of a stockholder who has not been paid is to compel the restoration of the funds illegally distributed.

(Decided by the Supreme Court of California, in the case of *Tapscott vs. Mexican Colorado River Land Company*, which decision is printed in *California Decisions*, Volume 35, page 598.)

Section 1047.—EXTENT OF DEBTS TO BE CREATED.—The directors of a corporation have no power to create debts beyond the amount of the subscribed capital stock. If they create debts beyond the capital stock, the directors are individually, jointly, and severally liable to the corporation and the creditors for such debts. A director, however, who is not present at the meeting when the debt is created, or who has his dissent to the board's action entered on the minutes, will not be liable.

Civil Code, Section 309.

Section 1048.—RECORDS OF CORPORATION.—All corporations for profit in California are required by the law to

keep a record of all their business transactions; a journal of all meetings of their directors, members, or stockholders, with the time and place of holding the same, whether regular or special, and if special, its object, how authorized, and the notice thereof given. The record must embrace every act done or ordered to be done; who were present, and who absent; and, if requested by any director, member, or stockholder, the time shall be noted when he entered the meeting or obtained leave of absence therefrom. On a similar request, the ayes and nos must be taken on any proposition, and a record thereof made. On similar request, the protest of any director, member, or stockholder, to any action or proposed action, must be entered in full. All such records must be open to the inspection of any director, member, stockholder, or creditor of the corporation. Corporations for profit must also keep a book to be known as "Stock and Transfer Book," in which must be kept a record of all stock; the names of the stockholders, or members, alphabetically arranged; installments paid or unpaid; assessments levied and paid or unpaid; a statement of every alienation, sale, or transfer of stock made, the date thereof, and by and to whom; and all such other records as the By-Laws prescribe. Such "Stock and Transfer Book" must be kept open to the inspection of any stockholder, member, or creditor.

Civil Code, Sections 377, 378.

Section 1049.—REMOVAL OF DIRECTORS FROM OFFICE.—No director can be removed from office, unless by a vote of two-thirds of the members, or of stockholders holding two-thirds of the capital stock, at a general meeting held after previous notice of the time and place, and of the intention to propose such removal. Meetings of stockholders for this purpose may be called by the President or by a majority of the directors, or by members or stockholders holding at least one-half of the votes. Such calls must be in writing, and addressed to the Secretary, who must thereupon give notice of the time, place, and object



of the meeting, and by whose order it is called. If the Secretary refuse to give the notice, or if there is no Secretary, the call may be addressed directly to the members or stockholders, and be served as a notice, in which case it must specify the time and place of meeting.

Section 1050.—EXAMINATION OF CORPORATION.—As the right of corporations to exist and do business comes from the State, it follows logically that the State retains the power to examine into the affairs of all corporations at any time. The law provides that the Governor may require the Attorney General, or the District Attorney of any county, to make an examination into the affairs of a corporation and report to the Governor. The Legislature may also examine into the condition and affairs of a corporation, by a committee appointed by either the Senate or Assembly. And the Legislature may dissolve all corporations by repealing the laws under which they were created.

Civil Code, Sections 382, 383, 384.

Section 1051.—DISSOLUTION OF CORPORATION.—The dissolution of a corporation may be voluntary, or involuntary. It is voluntary, when the dissolution is effected by consent of the stockholders or members. It is involuntary, when the dissolution is compelled against or without the consent of the stockholders or members. If voluntary, an application is made to the Superior Court of the county where the principal place of business of the corporation is. This application to the court must first be authorized by a resolution of the members or stockholders, adopted by a two-thirds vote of the members, where there is no capital stock, or by a vote of the holders of two-thirds of the subscribed capital stock; and it must also appear that all claims and demands against the corporation have been paid and discharged. A corporation may also be dissolved against the consent of the stockholders

by a judgment of dissolution in a suit brought by the Attorney General. In such a suit, if it appears that the corporation is doing a business not provided for by its charter, or has ceased to do business at all, or its term of existence has expired, or is in such a condition that it can no longer hope to carry out the ends and purposes of the corporation, the corporation will be declared dissolved by judgment of the court.

Code of Civil Procedure, Sections 803, 1227, 1228.

Section 1052.—DISPOSITION TO BE MADE OF PROPERTY UPON DISSOLUTION.—Upon the dissolution of a corporation the capital stock, and all property of the corporation, will be divided among the stockholders in proportion to the number of shares held by each. But before any such division can be made, it must appear that all debts of the corporation have been paid. The directors of a dissolved corporation have authority to go on and make final settlement of its affairs, and have power to make a division of the property left over after the payment of the debts.

Civil Code, Section 309.

Section 1053.—FALSE REPORTS.—Any officer of a corporation who wilfully gives a certificate, or wilfully makes an official report, public notice, or entry in any of the records or books of the corporation, concerning the corporation or its business, which is false in any material representation, is liable for all the damages resulting therefrom to any person injured thereby; and if two or more officers unite or participate in the commission of any of such acts, they are jointly and severally liable.

Civil Code, Section 316.

Section 1054.—TRANSFER OF FRANCHISE.—No sale, lease, assignment, transfer, or conveyance of the business, franchise and property, as a whole, of any corporation is

valid without the consent of stockholders holding of record at least two-thirds of the issued capital stock of the corporation; such consent to be either expressed in writing, executed and acknowledged by such stockholders, and attached to such sale, lease, assignment, transfer, or conveyance, or by a vote at a stockholders' meeting called for that purpose; but with such assent so expressed, such sale, lease, assignment, transfer, or conveyance is valid.

Statutes of 1903, page 396.

Section 1055.—TRANSFER OF FOREIGN CONCESSIONS.—A corporation owning grants, concessions, franchises, and property, in a foreign country, has the right under our laws to sell and convey the same; but such sale and conveyance can only be made by a resolution adopted by the vote of a majority of the Board of Directors, and the written consent of the holders of two-thirds of the capital stock.

Statutes of 1899, page 95.

Section 1056.—GENERAL POWERS OF CORPORATIONS.—The law provides what shall be the general powers of a corporation in California. Every corporation in California has power, (1) To sue and be sued in any court; (2) To make and use a common seal, and alter the same at pleasure; (3) To purchase, hold, and convey such real and personal estate as the purpose of the corporation may require; (4) To appoint such subordinate officers or agents as the business of the corporation may require, and to allow them suitable compensation; (5) To make By-Laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock; (6) To admit stockholders or members, and to sell their stock or shares for the payment of assessments or installments; (7) To enter into any obligations or contracts essential to the transaction of its ordinary affairs, or for the purpose of the corporation.

The manner of the exercise of these general powers has already been stated in preceding sections.

Civil Code, Section 354.

Section 1057.—VOTING TRUST AGREEMENTS IN MARKETING CORPORATIONS.—Nothing contained in the law shall prevent the execution of valid pooling or voting trust agreements by the stockholders of a corporation organized for the purpose of marketing agricultural products, and the principal business of which is the preparation for and the marketing of such products, the majority of the stock of which is owned by producers of such products; and it shall be lawful for any number of the owners of the capital stock of such corporation, in order to prevent the capital stock thereof from being controlled by interests hostile to such producers and to secure safe and prudent management of the corporation in the interests of the whole number of its stockholders, to enter into agreements with each other by which, for a definite period of time stated therein, the capital stock of such corporation owned by them shall be voted as the owners of a majority of the stock represented by such agreement shall direct from time to time, or to enter into agreements by which the stock to which they shall be entitled shall be issued to trustees selected from among the signers to be held and voted by such trustees for the period specified in and in accordance with the terms of said agreement, and the mutual promises of the several signers of any such agreement shall be sufficient consideration for the making thereof.

Act of the Legislature, approved April 21, 1919;  
in effect July 22, 1919.

Section 1058.—NUMBER OF DIRECTORS—INCREASE OR DECREASE.—Any corporation or association may increase or diminish the number of its directors or trustees by the vote or written assent of stockholders representing a ma-



jority of its subscribed capital stock, or, if it has no capital stock, by the vote or written assent of a majority of the members. A certificate over the corporate seal, setting forth the action taken by the stockholders, or members, and stating the new number of directors, shall be signed by the President and Secretary of such corporation or association, and filed in the office of the county clerk of the county where its original articles of incorporation were filed, and a copy of said certificate, certified by such county clerk, shall be filed in the office of the Secretary of State, whereupon the number of directors or trustees shall be changed as stated in said certificate. This law applies to all corporations existing under the laws of the State of California, whether organized and incorporated prior to the enactment of the Civil Code, or subsequent thereto.

Act of the Legislature, approved May 10, 1917;  
in effect July 27, 1917.

Section 1059.—FINANCIAL STATEMENT TO STOCKHOLDERS.—Upon the written request of not less than ten per cent of the stockholders, presented not less than two weeks prior to the time of the annual election, there must be served upon each stockholder, at least one week prior to such election, one copy of a financial statement of the affairs of the corporation, which must show the authorized capital stock of the corporation, the amount of capital stock subscribed, the amount of capital actually paid in, the assets and the surplus and undivided profits of the corporation, the amount paid to employes, the names and addresses of all the officers and directors of the corporation, the amount of mortgages, bonded or other indebtedness of the corporation, and the amount of the last annual, semi-annual or quarterly dividend, and a general summary of the business transacted by the corporation since the last preceding annual meeting. The financial statement herein referred to shall be signed by the President and Secretary of the corporation, and shall be sworn

to by them, and must be personally served upon each stockholder, or, in lieu of personal service, must be sent by mail addressed to each stockholder at his place of residence if known, or if not known, at the place where the principal office of the corporation is situated. The President or Secretary of any corporation who with intent to deceive shall sign a false financial statement shall be deemed guilty of a misdemeanor.

Statutes of 1915; in effect August 8, 1915.

Section 1060.—CORPORATE SECURITIES ACT.—In 1917 the Legislature of California passed a law known as the Corporate Securities Act, and also frequently referred to as the “blue sky law,” for the regulation and supervision of the sale of securities, and to prevent fraud in the sale of securities. The provisions of the law are as follows:

*Meaning of “Security.”*—The word security includes (among certain definitions in sections 1 and 2 of the act):

(a) All shares or other interests or rights into which the capital, capital stock, or property of companies or rights of stockholders or members thereof are divided, including all treasury shares and shares of their own capital stock purchased or otherwise acquired by companies upon delinquent assessment sales or in any other lawful manner, and all certificates and other instruments issued by them or their authority, evidencing or representing such shares, interests, or rights;

(b) All bonds, debentures, and evidences of indebtedness issued by any company; and

(c) Any instrument issued or offered to the public by any company, evidencing or representing any right to participate or share in the profits or earnings or the distribution of assets of any business carried on for profit; excepting therefrom the following:

1. Bills of exchange and promissory notes not offered to the public by the drawer, maker, or underwriter thereof, and all mortgages and deeds of trust of property sit-

uated in this State, executed to secure the payment thereof; and

2. Any security listed in any standard manual of information, as to which the commissioner shall first make and file his written finding to the effect that such security is fully and accurately described in such manual and that a sale thereof will not, in his opinion, work a fraud upon the purchaser thereof; *provided*, that if such finding shall thereafter be vacated or set aside, such security shall not thereafter be deemed to be included within this exception.

(b) "*Sale.*"—A "sale," within the meaning of this act, includes every contract by which, for a pecuniary consideration, called a price, one transfers to another an interest in property, and also an exchange, a pledge, a hypothecation, and any transfer in trust or otherwise as security for the performance of an obligation, and also any issue of any security by a company; and the word "sell," as used in this act, includes every act by which such sale is made.

(c) "*Agent.*"—The word "agent" as used in this act means and includes every person or company employed or appointed by a company or a broker who shall, within this State, either as an employe or otherwise, for a compensation, sell, offer for sale, negotiate for the sale of, or take subscriptions for any security of any company of its own issue offered for sale by it.

(d) "*Broker.*"—The word "broker" as used in this act includes every person or company, other than an agent who shall, in this state, engage, either wholly or in part, in the business of selling, offering for sale, negotiating for the sale of, or otherwise dealing in any security or securities issued by others, or of underwriting any issue of securities or of purchasing such securities with the purpose of reselling them or of offering them for sale to the public for a commission or at a profit; excepting therefrom the following:

(a) Any owner of any security who is not the issuer or an underwriter thereof, who sells or exchanges the

same for his own account; *provided*, that such sale or exchange is not made in the course of repeated and successive transactions of like or similar character by him;

(b) Any trustee of a trust created by or declared in a will or a judicial writ, order, decree or judgment, who, in such capacity, lawfully disposes of any property;

(c) Any company transacting a banking or insurance business in this State, selling a security for an owner thereof or a broker, other than an underwriter thereof, at a commission of not more than 2 per cent of the par or face value thereof; *provided*, such sale is not made in the course of repeated and successive transactions of like or similar character by such company;

(d) One, not the issuer, who disposes of securities to a broker or to a purchaser who, as a part of his regular business, purchases such securities;

(e) Any pledge holder selling, in good faith and not for the purpose of avoiding the provisions of this act, and in the ordinary course of business, a security pledged with him as security for a bona fide debt.

(e) *Permit to Sell Securities.*—Sec. 3. No company shall sell, except upon a sale for a delinquent assessment, or offer for sale, negotiate for sale of, or take subscriptions for any security of its own issue until it shall have first applied for and secured from the commissioner a permit authorizing it so to do. Such application shall be in writing, shall be verified as provided for the verification of pleadings, and shall be filed in the office of the commissioner. In such application the applicant shall set forth the names and addresses of its officers, the location of its office, an itemized account of its financial condition, the amount and character of its assets and liabilities, a detailed statement of the plan upon which it proposes to transact business, a copy of any security it proposes to issue, a copy of any contract it proposes to make concerning the same, a copy of any prospectus or advertisement, or other description of such securities, then prepared by or for it for distribution or publication, and such addi-



Section 1060, page 760, sub-division (e), "Business Law for Business Men"—SUBSCRIPTIONS FOR SHARES—Neither this act nor any provision hereof shall be deemed to prohibit subscriptions for shares of a domestic corporation made prior to the incorporation thereof and set forth in its articles of incorporation; but such subscriptions shall be deemed to have been made and accepted upon the condition that such corporation shall be incorporated within ninety days thereafter and, when incorporated, shall with reasonable diligence apply for and secure from the commissioner a permit authorizing the issue of the shares so subscribed for, in accordance with such subscriptions.

Act of the Legislature of California, approved June 1, 1921; in effect August 1, 1921.



tional information concerning the company, its condition and affairs as the commissioner may require. If the applicant is a partnership or an unincorporated association or joint stock company, it shall file with its application a copy of its articles of partnership or association, and all other papers pertaining to its organization. If the applicant is a trustee, it shall file with its application a copy of all instruments by which the trust is created and in which it is accepted, acknowledged or declared. If the applicant is a corporation, it shall file with its application a copy of all minutes of any proceedings of its directors or stockholders or members relating to or affecting the issue of such securities, and also a copy of its articles of incorporation and of its by-laws and of any amendments thereto. If the applicant is a corporation or association organized under the laws of any other State, territory, or government, it shall also file with its application a certificate, executed by the proper officer of such state, territory, or government not more than thirty days before the filing of such application, showing that such applicant is authorized to transact business in such State, territory, or government; and also, in such form as the commissioner may prescribe its written instrument, irrevocably appointing the commissioner and his successor in office its true and lawful attorney upon whom all process in any action or proceeding against it may be served, with the same effect as if said corporation or association were organized or created under the laws of this State and had been lawfully served with process therein.

(f) *Examination of Application.*—Sec. 4. Upon the filing of such application, it shall be the duty of the commissioner to examine it and the other papers and documents filed therewith, and he may, if he deems it advisable, make or have made a detailed examination, audit, and investigation of the applicant and its affairs. If he finds that the proposed plan of business of the applicant is not unfair, unjust, or inequitable, that it intends to fairly and honestly transact its business, and that the securities that it pro-

poses to issue and the methods to be used by it in issuing or disposing of them are not such as, in his opinion, will work a fraud upon the purchaser thereof, the commissioner shall issue to the applicant a permit authorizing it to issue and dispose of securities, as therein provided, in this State, in such amounts and for such considerations and upon such terms and conditions as the commissioner may in said permit provide. Otherwise, he shall deny the application and refuse such permit and notify the applicant in writing of his decision. Every permit shall recite in bold type that the issuance thereof is permissive only and does not constitute a recommendation or indorsement of the securities permitted to be issued. The commissioner may impose such conditions as he may deem necessary to the issue of such securities, and shall have the power to establish such rules and regulations as may be reasonable or necessary to insure the disposition of the proceeds of such securities in the manner and for the purposes provided in such permit, and may, from time to time for cause, amend, alter, or revoke any permit issued by him, or temporarily suspend the rights of the applicant under such permit.

(g) *Certificate of Agent or Broker.*—Sec. 5. No person or company shall act as an agent or broker until such person or company shall have first applied for and secured from the commissioner a certificate, then in effect, authorizing such person or company so to do. Every such certificate shall expire on the thirty-first day of December next after its issuance, unless sooner revoked. To secure such certificate, the applicant shall make and file in the office of the commissioner an application therefor in writing, verified by or in behalf of the applicant. In such application, the applicant shall set forth in addition to such other information as may be required by the commissioner:

1. The name and address of the applicant, and, if it be a corporation, association, or joint stock company, the name and address of each of its managing officers and



agents, and, if it be a partnership, the name and address of each of the partners;

2. A succinct statement of facts showing that the applicant, and its managing officers and agents, if it be a corporation, or members, if it be a partnership, have a good business reputation;

3. If the applicant is a broker, the general plan and character of the business of the applicant.

For filing such application, the applicant shall pay a fee as hereinafter provided. If the applicant is a corporation or association organized under the laws of any other state, territory, or government, it shall file with its application a copy of its articles of incorporation or association, together with a certificate executed by the proper officer of such state, territory, or government not more than thirty days before the filing of such application, showing that such applicant is authorized to transact business in such State, territory or government, and also, in such form as the commissioner may prescribe, its written instrument, irrevocably appointing the commissioner and his successor in office its true and lawful attorney upon whom all process in any action or proceeding against it, arising out of or founded upon the actual fraud of such applicant in the sale of securities within this State, may be served, with the same effect as if said corporation or association were organized or created under the laws of this state and had been lawfully served with process therein.

(b) *Certificate Issued.*—Sec. 6. The commissioner shall examine such application, and shall make such further investigation of the applicant and its affairs as he shall deem advisable. If, from such examination, the commissioner shall be satisfied of the good business reputation of the applicant and of its officers or members, if any, he shall issue such certificate. Otherwise, he shall refuse the same and deny the application and notify the applicant of his decision. The commissioner may at any time revoke any broker's or agent's certificate issued by

him if he shall find that the holder thereof is of bad business repute, or has violated any provision of this act, or has engaged, or is about to engage in any fraudulent transaction.

(i) *Advertisements Submitted to Commissioner.*—

Sec. 7. No person, partnership, association, or corporation, other than a broker holding a broker's certificate, then in effect, shall issue, circulate, or publish any advertisement, pamphlet, prospectus, or circular concerning any security, to be issued by any company, that such person, partnership, association, or corporation desires or proposes to sell, until the company proposing to issue such security shall have first secured from the commissioner a permit authorizing it to issue or sell such security; nor shall any company, broker, or agent, or any other person, issue, circulate, or publish any advertisement, pamphlet, prospectus, or circular concerning any security sold or offered for sale by it, unless the name of the company, broker, agent, or person issuing, circulating, or publishing the same shall be subscribed thereto, and a true copy thereof shall have been first filed in the office of the commissioner, or deposited in a United States post office, properly enclosed in a sealed envelope, addressed to the commissioner at Sacramento, California, with the postage duly prepaid thereon; nor shall any company, broker, or agent, or any other person, issue, circulate, or publish any such advertisement, pamphlet, prospectus, or circular after notice in writing given to it by the commissioner, that, in his opinion, the same contains any statements that is false or misleading or otherwise likely to deceive a reader thereof.

(j) *Report by Company on Sale of Securities.*—Sec. 8.

Every company authorized by the commissioner to sell securities shall thereafter, at such times as it may be required by the commissioner, make and file in the office of the commissioner a report, setting forth, in such form as the commissioner may prescribe, the securities sold by it under the authority of any permit issued by him, the

proceeds derived therefrom, the disposition of such proceeds, and such other information concerning its property, officers, or affairs, relating to or affecting the value of such securities, as the commissioner may require.

(k) *Statement by Broker on Sale of Securities.*—Sec. 9. Every broker shall, at such times as it may be required by the commissioner, make and file in the office of the commissioner a true and correct statement concerning any security sold or offered for sale by such broker, showing the name and location of the principal office of the issuer of such security; the names of its managing officers, if it is a corporation, or its members, if it is a partnership; its assets, liabilities, and issued capital stock, at the close of its fiscal year then last ended, or at a later date; its gross income, expenses, and fixed charges for the year next preceding such date, or for such time as such issuer of such security has transacted business, if for less than one year, and the approximate price at which such broker has sold or proposes to sell such security, together with such other information, of which the broker may have knowledge, as the commissioner may require.

(l) *Papers Open to Public Inspection.*—Sec. 10. All papers, documents, reports, and other instruments in writing filed with the commissioner under this act shall be open to public inspection; *provided*, that if, in his judgment, the public welfare or the welfare of any company, broker, or agent demands that any portion of such information be not made public, he may, in his discretion, withhold such information from public inspection for such time as in his judgment is necessary. The commissioner may at any time give, issue, or make public any information concerning any company or any contracts, stocks, bonds, or other securities sold or offered for sale within this state, if in his judgment the giving, issuing, or publishing of the same will be of public interest or advantage or will tend to prevent the fraudulent sale of such securities.



(m) *Review of Orders, Etc., of Commissioner.*—Sec. 11. Every order, decision, permit or other official act of the commissioner shall be subject to review, and any party aggrieved by any such order, decision, or permit of the commissioner may appeal therefrom to the superior court of the county of Sacramento, by serving upon the commissioner a notice of such appeal, a demand in writing for a certified transcript of all the papers on file in his office affecting or relating to such decision, and the payment of the fee therefor, within sixty days after the making of any such order, permit, or decision. Thereupon the commissioner shall, within ten days, make and certify such transcript, and the appellant shall, within five days thereafter, file the same and the notice of appeal with the clerk of said court. Upon the hearing of such appeal, the burden of proof shall lie upon the appellant, and the court shall receive and consider any pertinent evidence, whether oral or documentary, concerning the action of the commissioner from which the appeal is taken, but shall be limited to a consideration and determination of the question, whether there has been an abuse of discretion on the part of the commissioner in making such order, decision, or permit.

(n) *Securities Void.*—Sec. 12. Every security issued by any company, without a permit of the commissioner authorizing the same then in effect, shall be void, and every security issued by any company, with the authorization of the commissioner but not conforming in its provisions to the provisions, if any, which it is required by the permit of the commissioner to contain, shall be void.

(o) *Penalty for Company Violating Act.*—Sec. 13. Every company which shall directly or indirectly issue or cause to be issued any security contrary to the provisions of this act, or of the constitution of this state, or in nonconformity with a permit of the commissioner authorizing the same, or which applies the proceeds from the sale thereof, or any part thereof, to any purpose other than the purpose or purposes, if any, specified in such



permit, or to any purpose specified in such permit in excess of any amount limited in such permit to be used for such purpose, shall be guilty of a public offense and shall be punishable by a fine not exceeding ten thousand dollars.

(p) *Penalty for Officers, Etc.*—Sec. 14.—Every officer, agent or employee of any company, and every other person, who knowingly authorizes, directs, or aids in the issue or sale of, or issues or executes, or sells, or causes or assists in causing to be issued, executed, or sold, any security, in nonconformity with a permit of the commissioner then in effect authorizing such issue, or contrary to the provisions of this act, or of the constitution of this state, or who, in any application to the commissioner, or in any proceeding before him, or in any examination, audit, or investigation made by him or his authority, knowingly makes any false statement or representation, or who, with knowledge of its falsity, files or causes to be filed in the office of the commissioner any false statement or representation concerning such company or the property which it then holds or proposes to acquire, or concerning its officers or its financial condition or other affairs, or concerning its proposed plan of business, or who, with knowledge of the falsity of any such statement or representation, issues, executes, or sells or causes to be issued, executed, or sold, any security, without first informing the commissioner of the falsity of such statement in writing, or who, directly or indirectly, knowingly applies, or causes or assists in causing to be applied, the proceeds or any part thereof, from the sale of any security to any purpose contrary to the provisions of the permit authorizing the issue of such security, or to any purpose specified in such permit in excess of any amount limited in such permit to be used for such purpose, or who, with knowledge that any security has been issued or executed in violation of any of the provisions of this act, sells or offers the same for sale, or who, with knowledge that any advertisement, pamphlet, prospectus, or circular concerning any security contains any statement that is false

or misleading, or otherwise likely to deceive a reader thereof, issues, circulates, or publishes the same, or shall cause the same to be issued, circulated, or published, or who, in any other respect wilfully violates, or fails to comply with any of the provisions of this act or who, in any other respect, wilfully violates or fails, omits, or neglects to obey, observe, or comply with any order, permit, decision, demand, or requirement, or any part or provision thereof of the commissioner under the provisions of this act, is guilty of a public offense and shall be punished by imprisonment in the state prison not exceeding five years, or in a county jail not exceeding two years, or by a fine not exceeding five thousand dollars, or by both such fine and imprisonment.

(q) *State Corporation Department Created.*—Sec. 15. There is hereby created a state corporation department. The chief officer of such department shall be the commissioner of corporations. He shall be appointed by the governor and hold office at the pleasure of the governor. He shall receive an annual salary of five thousand dollars, to be paid monthly out of the state treasury upon a warrant of the controller. He shall within fifteen days from the time of notice of his appointment take and subscribe to the constitutional oath of office and file the same in the office of the secretary of state and execute to the people of the state a bond in the penal sum of ten thousand dollars with corporate security or two or more sureties, to be approved by the governor of the state, for the faithful discharge of the duties of his office.

(r) *Powers of Commissioner.*—The commissioner shall at all times have the power to administer oaths and to make an examination or investigation of the books, records, accounts, and other papers, and of the business of any company, broker, or agent permitted or authorized by him to sell securities, to make dividends, to create debts, to divide, withdraw, or pay to the stockholders, or any of them, any part of its capital stock, or to increase

or reduce its capital stock. On any examination, audit, or investigation made or hearing conducted by him, he shall have the power to take the testimony of any witness and to issue subpoenas requiring the attendance upon such examination, audit, investigation, or hearing in any part of the state of witnesses and the production of books, documents, and other things under their control, and in any such case to take or cause to be taken the deposition of any witness residing within or without this state.

No person shall be excused from testifying or from producing any book, document, or other thing under his control upon any such examination, audit, investigation, or hearing upon the ground that his testimony, or the book, document, or other thing required of him, may tend to incriminate him, or may have a tendency to subject him to punishment for a felony, or to a penalty or forfeiture; but no person shall be prosecuted, punished, or subjected to any penalty or forfeiture for or on account of any act, transaction, matter, or thing concerning which he shall have been so compelled to testify under oath, or to produce such documentary or other evidence; *provided*, that no person so testifying shall be exempt from prosecution or punishment for perjury if committed by him in his testimony. The authority to make or conduct any such examination, audit, investigation, or hearing, including the authority to administer oaths, and to subpoena witnesses and take their testimony, may be delegated by the commissioner to any deputy or examiner appointed by him for that purpose. Such appointment shall be made by an instrument in writing, signed by the commissioner under his official seal, and upon such examination, audit, investigation, or hearing, the same shall be produced by such deputy or examiner at any time upon demand therefor.

(s) *Fees*.—The commissioner shall charge and collect the following fees:

1. For filing any application for a permit to issue securities, ten dollars, plus—

One twentieth of one per cent of the amount of any excess of the aggregate value of the securities sought to be issued over twenty thousand dollars and not exceeding fifty thousand dollars;

One twenty-fifth of one per cent of such amount in excess of fifty thousand dollars and not exceeding one hundred thousand dollars;

One fiftieth of one per cent of such amount in excess of one hundred thousand dollars and not exceeding five hundred thousand dollars; and

One one-hundredth of one per cent of such amount in excess of five hundred thousand dollars.

The value of such securities shall be deemed to be their par or face value, if they have a par or face value; otherwise, the price at which the company proposes to sell or issue the same, or the value, as alleged in the application, of the consideration (if other than money) to be received in exchange therefor.

2. For filing any application for a permit or other authority to make dividends, create debts, or to divide, withdraw, increase, reduce or pay to the stockholders, or any of them, the capital stock, or any part thereof, the same amount that would otherwise be chargeable or collectible if such application were for a permit to issue securities; *provided*, that in any such case the value shall be determined by the amount of dividends made, debts created, or capital stock divided, withdrawn, increased, reduced, or paid.

3. For filing any application for a broker's certificate, five dollars.

4. For filing any application for an agent's certificate, one dollar.

5. For any examination, audit, or investigation, ten dollars per day or fraction thereof, if made by the commissioner, or the actual amount of the salary or other compensation, not exceeding ten dollars per day, paid to any deputy or other employee of the commissioner, if made by a deputy or other employee, for each day or



fraction thereof that such commissioner, deputy, or other employee shall necessarily be absent from his office for the purpose of making such examination, audit, or investigation, plus the actual amount of traveling expenses reasonably incurred in the performance of such work.

6. For copies of papers and records not required to be certified or otherwise authenticated by the commissioner, ten cents for each folio.

7. For certified copies of official documents, orders, and other papers filed in his office; for making and mailing copies or process served upon him under the provisions of section eighteen of this act, and for transcripts on appeal, fifteen cents for each folio and one dollar for each certificate under seal affixed thereto.

8. For certificate of service and mailing of process served upon the commissioner under the provisions of section eighteen of this act, two dollars.

No fees shall be charged or collected for copies of papers, records, or official documents furnished to public officers for use in their official capacity or for the reports of the commissioner in the ordinary course of distribution; but the commissioner may fix a reasonable charge for publication issued under his authority.

The commissioner shall adopt a seal bearing the following inscription: "Commissioner of Corporations State of California." The seal shall be affixed to all writs, orders, permits, and certificates issued by him, and to such other instruments as he shall direct. All courts shall take judicial notice of said seal.

(t) *Copies of Orders, Etc.*—The commissioner may execute in duplicate any order, finding, or permit issued by him, and each of such parts shall be deemed to be an original. An original of every such order, finding, or permit shall be retained and preserved by him in his office. Copies of all documents, orders, and permits made, executed, or issued by the commissioner, and of all papers filed in his office, when certified by the commissioner under his official seal, shall be received in evidence in all cases

in like manner and with the same effect as the originals. Any order or permit issued by the commissioner, or a copy thereof certified by the commissioner under his official seal, to be a true copy of the original order or permit, may be recorded in the office of the county recorder of the county in which is located the principal place of business of the company affected thereby or in which is situated any property of such company, and such record shall impart notice of such order or permit, and of all its provisions, to all persons. A certificate under the seal of the commissioner that any such order or permit has not been amended, altered, revoked, or suspended may also be recorded in the same offices and with like effect.

(u) *Subscription for Shares Prior to Incorporation.* Neither this act nor any provision hereof shall be deemed to prohibit subscriptions for shares of a corporation made prior to the incorporation thereof and set forth in its articles of incorporation; but such subscriptions shall be deemed to have been made and accepted upon the condition that such corporation, when incorporated, shall with reasonable diligence apply for and secure from the commissioner a permit authorizing the issue of the shares so subscribed for, in accordance with such subscriptions.

(v) *Election of Officers Prior to Issuing Shares.*—The directors or trustees named in the articles of incorporation may, prior to the issue of any shares, organize by the election of a president, who must be one of their number, a secretary and a treasurer; and such directors, or a majority of them, or such president and secretary may, in the name of and in behalf of the corporation, present an application to the commissioner as herein provided.

Act of the Legislature, approved May 18, 1917;  
in effect July 27, 1917.

Act of the Legislature, approved May 2, 1919;  
in effect July 22, 1919.

Section 1061.—PUBLIC UTILITIES.—The control of public utilities in California is given by law to the State Rail-

road Commission, which regulates the business and approves the rates and charges of many corporations. The term "public utility," includes every common carrier, pipe line corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, wharfinger, warehouseman, and heat corporation, where the service is performed for or the commodity delivered to the public or any portion thereof.

Act of the Legislature, approved May 11, 1919;  
in effect July 22, 1919.

Section 1062.—INCOME TAX ON CORPORATIONS.—A law passed by the Congress of the United States creates an income tax on corporations. The law applies to all corporations, joint stock companies or associations, having a capital stock, and to all insurance companies, whether organized under the laws of any state or territory of the United States, or under the laws of a foreign country, engaged in business in any state or territory of the United States or in Alaska or District of Columbia. The tax must be paid annually to the United States, of two percentum upon the entire net income received from all sources during each year. The tax on corporations organized under the laws of any foreign country is upon the amount of net income over and above five thousand dollars received from business transacted and capital invested within the United States and its territories, Alaska and the District of Columbia, during each year. The law applies only to corporations organized and operated for profit, and does not apply to fraternal societies, or to labor, agricultural or horticultural organizations. The net income must be ascertained by deducting from the gross amount all ordinary necessary expenses of maintenance and operation; all losses actually sustained during the year and not made up by insurance (and in case of insurance companies other than dividends paid within the year on policy and annuity contracts and annual additions made to reserve funds); inter-



est paid on bonded or other indebtedness not exceeding the paid up stock of the corporation, and in the case of a bank, banking association or trust company, interest actually paid on deposits; all sums paid within the year for taxes. Each corporation, by its President, Vice-President, or other principal officer, and its Treasurer or Assistant Treasurer, must make a true statement under oath to the Collector of Internal Revenue on or before the first day of March of each year, showing the capital stock, indebtedness, gross amount of income for the year, amount of dividends received, expenses paid out, losses sustained, interest paid, and the net income of the corporation after making the above deductions. The Government may appoint revenue agents to examine any books and papers of any corporation, and to take the testimony of the officers thereof, whenever there is doubt whether a statement made is true and correct. The law provides that if any statement made is false or with fraudulent intent, one hundred per cent must be added to the tax; and in the case of the refusal or neglect to make any statement or to verify the same fifty per cent must be added to the tax. If the officer of the corporation who should make this statement is sick or absent, the Collector may allow further time, not exceeding thirty days. The assessment of the tax must be made, and the corporation notified of the amount due from it, on or before the first day of June of each year, and the tax must be paid on or before the fifteenth day of June. If any tax remains unpaid after the fifteenth day of June in any year, and for ten days after notice and demand by the Collector, there must be added the sum of five per cent on the amount of the tax unpaid, and interest at the rate of one per cent per month from the time the tax becomes due. Every corporation failing to comply with the law requiring a true statement to be made each year, is liable to a penalty of not exceeding ten thousand dollars. Any person guilty of making a false or fraudulent statement, with intent to defeat or evade the tax, will be guilty of a misdemeanor



and subject to a fine not exceeding one thousand dollars or imprisonment not exceeding one year, or both, at the discretion of the Court, besides the costs of prosecution.

Act of Congress, approved August 5, 1909.

Act of Congress, approved September 8, 1916.

(a) *1919 Amendments.*—The federal income tax law is long and complicated, and no more can be attempted than a brief resume of important provisions and amendments. Nobody pretends to have a thorough understanding of this law, and the taxpayers' return must continue to be the result of more or less guesswork.

(b) *Tax Rates.*—The rate of normal tax on individual incomes has been raised from a combination of 2 per cent under the Revenue Act of 1915 and 2 per cent under the Revenue Act of 1917, making a total normal of 4 per cent, to 12 per cent for 1918 and 8 per cent for 1919, with a proviso that on the first \$4,000 of taxable income of a citizen or resident of the United States the rate shall be half of these percentages. Thus if an individual's gross income is \$10,000 his allowable deductions for business expenses, interest, taxes, etc., \$3,000, his net income would be \$7,000. Against this, if married, he would have a credit of \$2,000, leaving a taxable income of \$5,000, of which \$4,000 would be taxable at 6 per cent and \$1,000 at 12 per cent. He would also be liable for surtax on the excess of \$7,000 over \$5,000, the amount at which surtaxes begin, or \$2,000 at the rates under the first two brackets; that is, on \$1,000, the amount between \$5,000 and \$6,000, at 1 per cent and on \$1,000 under the second bracket, embracing amounts between \$6,000 and \$8,000, at 2 per cent. The surtax rates run from 1 per cent to 65 per cent (in addition to the normal) increasing 1 per cent for each additional \$2,000 of net income from \$6,000 to \$100,000, 4 per cent for each additional \$50,000 between \$100,000 and \$300,000, 3 per cent between \$300,000 and \$500,000, 1 per cent between \$500,000 and \$1,000,000, and 1 per cent over a million. An important addition to the

section imposing rates is the provision that in case of the bona fide mines, oil, or gas wells, where the principal value of the property has been demonstrated by development work done by the taxpayer the surtax upon the profit made from the sale shall not exceed 20 per cent of the selling price.

(c) *Exchange of Stock*.—An important change is made in that as to exchange of stock for stock or securities of no greater aggregate par or face value, in connection with any reorganization, merger, or consolidation, no profit or loss shall be deemed to occur from the exchange. If the aggregate par or face value of the new stock received is greater than the aggregate face or par of the old, a like amount of the new is treated as taking the place of the old, and the excess is treated as profit to the extent that the market value is in excess of the value March 1, 1913, or cost, of the old. In addition, provision is made for taking inventory value if inventory is made, as an alternative to cost, where property was purchased subsequent to March 1, 1913.

(d) *Net Losses*.—"Net loss" is defined as the excess of deductions allowed by law (other than dividends in the case of corporations) over the gross income plus tax free interest, such net loss resulting either (1) from operation of any business regularly carried on by the taxpayer, or (2) from the bona fide sale by the taxpayer of plant, building, equipment, etc., constructed, installed or acquired by the taxpayer on or after April 6, 1917, for the production of articles contributing to the prosecution of the war. Such net loss, sustained in any taxable year beginning after October 31, 1918, and ending prior to January 1, 1920, may be deducted from the income for the preceding year, and the tax recomputed accordingly, or, if in excess of the net income for such preceding taxable year, the excess may be carried over into the succeeding year as a deduction.

(e) *Deductions*.—The most important new deductions provide that at the time of filing return for the taxable

year 1918 a taxpayer may file a claim for abatement based upon a substantial loss (whether realized or not by actual sale) resulting from a material reduction (not due to temporary fluctuation) in the value of the inventory of such year, or the payment after the close of the year of rebates under contracts entered into during the year on sales made in such year, and in such case payment of the amount of the tax covered by the claim shall not be required until claim is decided, but the taxpayer must, if required by the Commissioner, give a bond in double the amount of the claim, for the payment of tax and interest, which interest, if the claim is disallowed, is 1 per cent a month. If no such claim is filed, but it is shown to the satisfaction of the Commission that during the year 1919 the taxpayer has suffered such a loss, the tax for the year 1917 is to be redetermined and the loss deducted from the income for that year.

(f) *Credits*.—The credits allowed (for purposes of normal tax only) (a) Dividends from taxable corporations and personal service corporations out of tax paid earnings, (b) Interest on obligations of the United States and bonds of the War Finance Corporation which is included in gross income (note that the only interest upon United States obligations which is included in gross income is upon obligations issued after September 1, 1917), (c) a personal exemption of \$1,000 in the case of a single person or \$2,000 in the case of a head of family or married person living with husband or wife, and (d) \$200 for each person (other than husband or wife) dependent upon and receiving his chief support from the taxpayer, if such dependent person is under 18 or mentally or physically incapacitated. Under the previous law the \$200 deduction was limited to each child instead of to each person.

(g) *Partnerships*.—Partnerships, as heretofore, are not subject to income tax, but the partners must return their individual shares of partnership profits and pay tax thereon, whether divided or not. Provision is made for prorating the share of earnings of a fiscal year part-



nership according to the proportionate period of each year covered.

(h) *Individual Returns*.—Heretofore returns were required of every person of lawful age having a net income of \$1,000 or more. This is charged so as to apply to every individual having a net income of \$1,000 if single or if married and not living with husband or wife, or \$2,000 if married, and living with husband or wife.

(i) *Partnership Returns*.—Under former law, partnerships were not required to make return for income tax purposes unless requested to do so by the Commissioner. They are now required to make such returns showing gross income, deductions, names of partners and distributive shares of each.

(j) *Returns When Accounting Period Is Changed*.—For the first time, the right is given to an individual to make return on a fiscal year basis, if the fiscal year ends with the last day of any month other than December. The phraseology providing for a change from a calendar to a fiscal year or back from one fiscal year to another is simplified. The change may be made at any time with the approval of the Commissioner, but in case the change is from a fiscal to a calendar year a separate return must be made for the period from the close of the last fiscal year for which return was made to December 31 following. In the case of change from calendar to fiscal year a separate return shall be made for the period from the close of the last calendar year to the date designated as the close of the fiscal year. These separate returns for a part year must of course be filed within sixty days after the close of the period for which the return is made.

(k) *Corporation Tax*.—On all corporations, except exempt corporations, the Act levies a tax of 12 per cent of the taxable income for the year 1918 and 10 per cent for the year 1919 and each year thereafter. Provision is made that, for the purposes of the Act of March 21, 1918, for the taking over by the Government of transportation companies, five-sixths of the tax of 12 per cent and four-



fifths of the tax of 10 per cent shall be treated as levied by an act amendatory of the Revenue Act of 1917.

(1) *Payment in Installments.*—The provision imposing 5 per cent penalty and 1 per cent a month interest on any amount of tax remaining unpaid for 10 days after notice and demand is retained, but it is provided that in case of a bona fide claim for abatement the interest while the claim is pending shall be at the rate of one-half of 1 per cent per month instead of 1 per cent. Instructions printed on the return are made notice and demand for the first installment, and if a distraint warrant is served \$5.00 is added to the tax.

(m) *War Excess Profit Tax.*—The income subject to excess profits tax is found by deducting from the net income as determined for income tax purposes (but without deducting the credits allowed by Sec. 236) the excess profits credit which is explained hereafter. So much of the resulting amount as does not exceed 20 per cent of the invested capital is subject to a 30 per cent tax, and any amount in excess of 20 per cent of the invested capital is subject to a 65 per cent tax. The tax rates stated above are for 1918 only, the rates for 1919 and subsequent years being 20 and 40 per cent respectively. It is provided, however, in effect that if any corporation during the taxable year 1919 or thereafter makes more than \$10,000 out of any government contract or contracts made between April 6, 1917, and November 11, 1918, it shall pay at the 1918 rate on the proportion of net income attributable to such contract, and at the 1919 rate on the balance, the proper apportionment and allocation of the deduction to be determined under rules and regulations to be prescribed by the Commissioner. The above provision is subject to the limitations of Section 302, that the 1918 rate shall in no case be more than 30 per cent of the income in excess of \$3,000 and not in excess of \$20,000 plus 80 per cent of the income in excess of \$20,000, and the 1919 rate shall in no case be more than 20 per cent plus 40 per cent of the same amounts of income respectively.

(n) *Luxury Taxes*.—Sec. 904 levies a tax of 10 per cent on so much of the selling price of any of the following articles when sold by a dealer or his estate as is in excess of the amount stated:

Carpets and rugs, on amount in excess of \$5.00 per square yard;

Picture frames, on amount in excess of \$10.00 each;

Trunks, on amount in excess of \$50.00 each;

Valises, traveling bags, on amount in excess of \$25.00 each;

Purses, pocket-books and shopping bags, on amount in excess of \$7.50 each;

Portable lighting fixtures, lamps, etc., on amount in excess of \$25.00 each;

Umbrellas, parasols and sunshades, on amount in excess of \$4.00 each;

Fans on amount in excess of \$1.00 each;

House or smoking jackets, bath and lounging robes, on amount in excess of \$7.50 each;

Men's waistcoats sold separately on amount in excess of \$5.00 each;

Women's and misses' hats, bonnets, and hoods, on amount in excess of \$15.00 each;

Men's and boys' hats, on amount in excess of \$5.00 each;

Men's, women's misses' and boys' shoes, on amount in excess of \$10.00 per pair;

Men's and boys' neckties and neckwear, on amount in excess of \$2.00 each;

Men's and boys' silk stockings or hose, on amount in excess of \$1.00 per pair;

Women's and misses' silk stockings or hose, on amount in excess of \$2.00 per pair;

Men's shirts, on amount in excess of \$3.00 each;

Pajamas, nightgowns and underwear, on amount in excess of \$5.00 each;

Kimonos, petticoats and waists, on amount in excess of \$15.00 each.

The taxes imposed by this section do not apply to any articles made of or ornamented or fitted with precious metals or imitations thereof or ivory, or to any article made of fur on the pelt, or of which such fur is the component part of chief value, or to liveries or hunting or shooting garments, elsewhere taxed. The taxes are to be paid to the vendor by the purchaser, and by him returned to the United States.

Luxury taxes were in effect May 1st, 1919.

(o) *Tax on Employment of Child Labor*.—Under this title a new tax is laid upon every person (other than a bona-fide boys' or girls' canning club organized by the Agricultural Department of a state or the United States) employing during any part of the taxable year children under 16 years of age in any quarry or mine, or under 14 years of age in any mill, cannery, factory, workshop, or manufacturing establishment, or where children between the ages of 14 and 16 have been permitted to work more than eight hours in any day or six days in any week, or before 6 a. m., or after 7 p. m., during any portion of the taxable year, the tax being an excise tax equivalent to 10 per cent of the entire net profits from the sale of the products of the mine, quarry, mill, cannery, workshop, factory, or manufacturing establishment.

The amount of such profits is to be computed by deducting from the gross receipts from the sale of such products the following items: (a) cost of raw materials; (b) running expenses; (c) interest paid on debts or loans contracted to meet the needs of the business; (d) taxes paid with respect to the business or property relating to the production; and (e) losses in connection with the business. The tax is not to be imposed if the employer has procured, relied upon, and kept a certificate, issued in such form and under such conditions as may be prescribed by a board to be composed of the Secretary of the Treasury, the Commissioner and the Secretary of Labor, or a state employment certificate issued under the laws of the state and not inconsistent with the provisions of the Act;

or if it be proven to the satisfaction of the Secretary that the employment of a child has been under a mistake of fact and without intention to evade the tax.

(p) *1920 Decision of United States Supreme Court.* On March 8, 1920, the Supreme Court of the United States made an important decision on taxation of dividends. The decision is to the effect that the surplus fund of a corporation carried to capital account, and shares of stock issued against the same and distributed to the stockholders, are not taxable. Dividends payable in cash on stock are taxable, whereas dividends payable in stock of the corporation are not taxable.

A. J. BLEDSOE, ATTORNEY-AT-LAW, Los Angeles, Cal.—Organization of corporations; election of directors, state and federal taxes (returns, exemptions, and payments). See title page of this book, for office address of A. J. Bledsoe.



Section 1063, page 783, "Business Law for Business Men"—COMMERCIAL BANK AS BROKER FOR LOANS—Add to section 1063, as follows:

(a) A commercial bank may act as the broker or agent for others in making or procuring loans on real estate located within one hundred miles of the place in which said bank may be located, receiving for such services a reasonable fee or commission; **provided, however,** that no such bank shall in any case guarantee either the principal or interest of any such loans or assume or guarantee the payment of any premium on insurance policies issued through its agency by its principal.

Act of the Legislature of California, approved June 3, 1921; in effect August 3, 1921.



## PART X.

### BANK LAWS OF CALIFORNIA.

Section 1063.—COMMERCIAL BANKS.—The term “commercial bank,” means any bank authorized by law to receive deposits of money, deal in commercial paper or to make loans thereon, and to lend money on real or personal property, and to discount bills, notes or other commercial paper, and to buy and sell and advertise for purchase or sale such securities as are permissible for investment by commercial banks, gold and silver bullion, or foreign coins or bills of exchange; *provided*, any commercial bank located and doing business in any place the population of which does not exceed five thousand persons, as shown by the last preceding federal census, or any subsequent census compiled and certified under any law of this state, may, under such rules and regulations as may be prescribed by the superintendent of banks, act as the agent for any fire, life, or other insurance company authorized by the authorities of the State of California to do business in this state, by soliciting and selling insurance and collecting premiums on policies issued by such company; and may receive for services so rendered such fees or commissions as may be agreed upon between the said bank and the insurance company for which it may act as agent; *provided, however*, that no such bank shall in any case assume or guarantee the payment of any premium on insurance policies issued through its agency by its principal; *and provided, further*, that said bank shall not guarantee the truth of any statement made by an assured in filing his application for insurance.

Act of the Legislature approved May 15, 1919;  
in effect July 22, 1919.

Section 1064.—COPY OF ARTICLES OF INCORPORATION.—Every corporation, at the time it applies for a certificate of authority to do a banking business, must file with the superintendent of banks a certified copy of its articles of incorporation, or of the statute chartering such corporation, a certified copy of its by-laws, and also a certified copy of all instruments amending or altering such articles of incorporation or charter or by-laws. Thereafter a certified copy of each amendment or certificate designed to increase or decrease the capital stock, to change the number of directors, to amend the articles of incorporation, to change the principal place of business, or the name of such corporation, or to effect any other organic change shall likewise be so filed before such instrument takes effect. Each certification required by the provisions of this section other than that of by-laws must be by the secretary of state.

Act of the Legislature approved May 15, 1919;  
in effect July 22, 1919.

Section 1065.—CAPITAL AND DEPOSIT LIABILITIES.—The aggregate of paid-up capital together with the surplus, of every commercial bank, must equal ten per centum of its deposit liabilities. The aggregate of paid-up capital and surplus of every savings bank having a capital stock, and the reserve fund of every savings bank without a capital stock, must equal the following percentages of its deposit liabilities:

(a) Ten per centum of any amount up to and including two million dollars.

(b) Seven and one-half per centum of any amount in excess of two million dollars up to and including five million dollars.

(c) Five per centum of any amount in excess of five million dollars up to and including fifteen million dollars.

(d) Two and one-half per centum of any amount in excess of fifteen million dollars up to and including forty million dollars.



Section 1065, page 784, "Business Law for Business Men"—CAPITAL AND DEPOSIT LIABILITIES OF COMMERCIAL AND SAVINGS BANKS—Substitute the following for section 1065, page 784: "The aggregate of paid-up capital together with the surplus, of every commercial bank, must equal the following percentages of its deposit liabilities:

"(a) Ten per centum of any amount up to and including two million dollars.

"(b) Seven and one-half per centum of any amount in excess of two million dollars up to and including five million dollars.

"(c) Five per centum of any amount in excess of five million dollars.

"The aggregate of paid-up capital together with the surplus of every savings bank having a capital stock, and the reserve fund of every savings bank without a capital stock, must equal the following percentages of its deposit liabilities:

SAVINGS BANKS—"(d) Ten per centum of any amount up to and including one million dollars.

"(e) Seven and one-half per centum of any amount in excess of one million dollars up to and including three million dollars.

"(f) Five per centum of any amount in excess of three million dollars up to and including ten million dollars.

"(g) Two and one-half per centum of any amount in excess of ten million dollars up to and including twenty-five million dollars.

"(h) One per centum of any amount in excess of twenty-five million dollars."

Act of the Legislature of California, approved June 3, 1921; in effect August 3, 1921.

(a) ORGANIZATION CAPITAL—Commercial and savings banks hereafter organized must have paid up in cash a capital stock of not less than \$25,000, population up to 5,000; \$50,000, population over 5,000 to 25,000; \$100,000, population over 25,000 up to 100,000; \$200,000, population over 100,000 up to 200,000; \$300,000, population over 200,000. This does not apply to a bank located in a place annexed to a larger city; but no such bank can move from its original place of business after annexation until it shall have the capital required in the larger place.

Any savings bank organized without capital stock must have a reserve fund of at least one million dollars. Every bank doing a departmental business shall have paid up, in cash, capital stock as follows:

In any locality in which the population does not exceed five thousand persons, not less than twenty-five thousand dollars if it transacts both a commercial and savings business, or not less than one hundred twenty-five thousand dollars, if it transacts both a commercial and trust business, or not less than one hundred twenty-five thousand dollars if it transacts both a savings and trust business, and not less than one hundred twenty-five thousand dollars if it transacts a commercial, savings and trust business.

In any city in which the population is more than five thousand persons, but does not exceed twenty-five thousand persons, not less than fifty thousand dollars if it transacts both a commercial and savings business, or not less than one hundred fifty thousand dollars if it transacts both a commercial and trust business, or not less than one hundred fifty thousand dollars if it transacts both a savings and trust business, and not less than one hundred fifty thousand dollars if it transacts a commercial, savings and trust business.

In any city in which the population is more than twenty-five thousand persons, but does not exceed one hundred thousand persons, not less than one hundred thousand dollars, if it transacts both a commercial and savings business, or not less than two hundred thousand dollars if it transacts both a commercial and trust business or not less than two hundred thousand dollars if it transacts both a savings and trust business, and not less than two hundred thousand dollars if it transacts a commercial, savings and trust business.

In any city in which the population is more than one hundred thousand persons, but does not exceed two hundred thousand persons, not less than two hundred thousand dollars if it transacts both a commercial and savings business, or not less than four hundred thousand dollars if it transacts both a commercial and trust business, or not less than four hundred thousand dollars if it transacts both a savings and trust business, and not less than four hundred thousand dollars if it transacts a commercial, savings and trust business.

In any city in which the population exceeds two hundred thousand persons, not less than three hundred thousand dollars if it transacts both a commercial and savings business, or not less than five hundred thousand dollars if it transacts both a commercial and trust business, or not less than five hundred thousand dollars if it transacts both a savings and trust business, and not less than five hundred thousand dollars if it transacts a commercial, savings and trust business.

Act of the Legislature of California, approved June 3, 1921; in effect August 3, 1921.



(e) One per centum of any amount in excess of forty million dollars.

The deposits shall not be increased if such proportion of paid-up capital and surplus or reserve fund to deposit liabilities is not maintained, and in no event shall said paid-up capital be less than the minimum paid-up capital provided by this act; *provided*, that such deposit liabilities shall be exclusive of United States and postal savings deposits and deposits of the State of California and of any county and municipality in the State of California which are secured as required by law.

Act of the Legislature, approved May 15, 1919;  
in effect July '22, 1919.

Section 1066.—TOTAL RESERVES OF COMMERCIAL BANKS. Every commercial bank shall maintain total reserves against its aggregate deposits, exclusive of United States and postal savings deposits and deposits of the State of California and of any county and municipality in the State of California, which are secured as required by law, as follows:

1. Eighteen per centum of such deposits if such bank has its principal place of business in a city having a population of one hundred thousand or over.

2. Fifteen per centum of such deposits, if such bank is located in a city having a population of fifty thousand or over and less than one hundred thousand.

3. Twelve per centum of such deposits if such bank is located elsewhere in the state.

At least one-half of the total reserves shall be maintained as reserves on hand and shall consist of gold bullion or any form of money or currency authorized by the laws of the United States, and the remainder of the total reserves required by the provisions of this section shall be maintained as reserves on deposit or as reserves on hand; such reserves on hand to consist of gold bullion or any form of money or currency authorized by the laws of the United States; *provided, however*, that all or

any part of the reserves may be deposited, subject to call, with a federal reserve bank in the district in which such bank is located.

If any bank shall have become a member of a federal reserve bank, it shall comply with the reserve requirements of the federal reserve act and its amendments, and its compliance therewith shall be in lieu of, and shall relieve such bank from compliance with, the provisions of this section.

If any bank shall not maintain the total reserves required the superintendent of banks may impose a penalty upon it, based upon the length of time such encroachment upon its total reserves amounting to one per centum or more of its aggregate deposits shall continue, at the following rates:

1. At the rate of six per centum per annum upon any such encroachment not exceeding two per centum of such deposits.

2. At the rate of eight per centum per annum upon any additional encroachment in excess of two and not exceeding three per centum of such deposits.

3. At the rate of ten per centum per annum upon any additional encroachment in excess of three and not exceeding four per centum of such deposits.

4. At the rate of twelve per centum per annum upon any additional encroachment in excess of four per centum of such deposits.

(a) *Reserve Depositaries.*—The superintendent of banks shall, in his discretion, upon the nomination of any bank, designate a depositary or depositaries for the reserves on deposit of such bank provided for by this act. Except as otherwise provided in this section, such depositary shall be a bank or national banking association located in this state. Every reserve depositary, which has its principal place of business in a judicial township or in a city located in this state in which the population is less than 50,000, shall have at all times as its total reserve an amount equal to the total reserves required by the pro-



visions of this section for every bank which has its principal place of business in a city having a population of fifty thousand or over and less than one hundred thousand.

(b) *Required Capital and Surplus of Depositary.*—No bank or national banking association shall hereafter be designated as a depositary of any such reserves unless it shall have a combined capital and surplus of not less than the following amounts:

1. Two hundred fifty thousand dollars, if located in a city which has a population of three hundred thousand or over;

2. Two hundred thousand dollars, if located in a city which has a population of one hundred thousand or over and less than three hundred thousand;

3. One hundred fifty thousand dollars, if located in a city which has a population of fifty thousand or over and less than one hundred thousand;

4. One hundred thousand dollars, if located elsewhere in the state.

Such depositary may also be a banking corporation with a capital and surplus of one million dollars or more, located in any city in the United States.

(c) *Restoration of Reserves.*—If the total reserves of any bank shall be less than the amount required by this section, such bank shall not increase its liabilities by making any new loans or discounts, otherwise than by discounting bills of exchange on sight, or by paying any dividends from profits until the full amount of its total reserves has been restored. The superintendent of banks may notify any bank whose total reserves shall be below the amount herein required, to restore such total reserves; and, if it shall fail for thirty days thereafter to restore such total reserves, such bank shall be deemed insolvent and may be proceeded against under the provisions of this act; *provided*, that all deposits of money herein permitted or required shall comply with the provisions of section forty-three of this act.

(d) "*Reserves on Hand.*"—The term, "reserves on hand," when used in this act, means the reserves against deposits kept, pursuant to the provisions of this act, in the vault of any bank or in any safety deposit box in any other bank in this state, said box to be under the exclusive control of the depositing bank.

(e) "*Reserves on Deposit.*"—The term, "reserves on deposit," when used in this act, means the reserves against deposits maintained by any bank pursuant to this act in reserve depositories, or in a federal reserve bank in the district in which such bank is located and not in excess of the amount authorized by this act.

(f) "*Total Reserves.*"—The term; "total reserves," when used in this act, means the aggregate of reserves on hand and reserves on deposit maintained pursuant to the provisions of this act.

(g) "*Reserve Depository.*"—The term, "reserve depository," when used in this act, means a bank, trust company or banking corporation designated by the superintendent of banks on the nomination of the depositing bank as a depository for reserves on deposit.

Act of the Legislature, approved May 15, 1919;  
in effect July 22, 1919.

Section 1067.—PREFERENCE TO DEPOSITORS.—No bank, banker, or bank officer, shall give preference to any depositor or creditor except as otherwise authorized by law; *provided*, that any commercial bank or commercial department of a departmental bank, is authorized and empowered for temporary purposes, to borrow money, or to borrow money and pledge or hypothecate as collateral security therefor, its assets not exceeding fifty per centum in excess of the amount borrowed, but only to the extent and upon terms and conditions as follows:

(a) *Borrowing Money.*—Any amount up to, but not exceeding the amount of its capital and surplus, without consent of the superintendent of banks; *provided, however*, that any amount borrowed, except as otherwise pro-

vided in this section, in excess of the amount of its capital and surplus, at such time actually paid in and remaining undiminished by losses or otherwise, must first be approved in writing by the superintendent of banks; *provided, also*, that no excess loan made to any such bank shall be invalid or illegal as to the lender, even though made without the consent of the superintendent of banks; *provided, also*, that the rediscounting with or without guarantee or endorsement with a federal reserve bank, of notes, drafts, bills of exchange and loans secured by obligations of the United States, is hereby authorized and shall not be limited by the terms of this act, and shall not be considered as borrowed money within the meaning of this section.

Any amount of California, state, county, city, city and county funds, or any other public money, in the manner it is or may be authorized by law to borrow and receive such public money on deposit without the approval of the superintendent of banks.

Any amount of the United States moneys and postal savings moneys of the United States, and receive such moneys on deposit, and pledge or hypothecate such of its securities and upon such terms as may be required by the laws of the United States or the rules and regulations of the secretary of the treasury of the United States, without the approval of the superintendent of banks.

Any amount, in addition to the amounts authorized to be borrowed in this section, for the purpose of buying from the United States, United States bonds, United States treasury certificates, or notes or obligations of the United States.

To rediscount with and sell to a federal reserve bank any and all such notes, drafts, bills of exchange, acceptances and any other securities, with no other restrictions, and as fully, and to the same extent as this privilege is given to national bank members under the terms of the federal reserve act, or by regulations of the federal reserve board made pursuant thereto.

(b) *Partial Payments*.—No bank shall make partial payments upon any certificate of deposit.

(c) *Overdrafts*.—In no case shall an overdraft of more than ninety days' standing be allowed as an asset of any bank.

(d) *Bad Debts*.—Any debt due to any commercial bank, on which interest is past due and unpaid for the period of one year, unless the same is well secured, and is in process of collection, shall be considered a bad debt and shall be charged off to the profit and loss account at the expiration of that time.

Act of the Legislature, approved May 15, 1919;  
in effect July 22, 1919.

Section 1068.—INVESTMENT IN CAPITAL STOCK OF CORPORATIONS.—No bank shall, except as otherwise provided in this act, purchase or invest its capital or surplus or money of its depositors, or any part of either, in the capital stock of any corporation unless the purchase or acquisition of such capital stock shall be necessary to prevent loss to the bank on an obligation owned or on a debt previously contracted in good faith. Any capital stock so purchased or acquired shall be sold by such bank within six months thereafter if it can be sold for the amount of the claim of such bank against it; and all capital stock thus purchased or acquired must be sold for the best price obtainable by said bank within three years after such purchase or acquisition unless the superintendent of banks shall extend the time of its sale for a period not to exceed two years.

(a) *Stock of Trust Company*.—Any bank, with the previous written consent of the superintendent of banks, may purchase or otherwise acquire and hold the whole or any part of the capital stock of not more than one trust company organized and existing under the laws of this state, and doing business in the same city in which the principal place of business of such bank is located; *provided, however*, that not more than an amount equal to



Section 1068, page 790, "Business Law for Business Men"—BUYING STOCK OF TRUST COMPANY—In sub-division (a), section 1068, in line 6, change the words "in the same city" so as to read "in the same county."

(a) Section 1073, page 797—Add to section 1073 two new sub-divisions as follows:

"(c) Foreign Banking—Any bank, without regard to the amount of its capital and surplus, may file application with the superintendent of banks for permission, upon such conditions and under such regulations as may be prescribed by said superintendent of banks, to invest an amount not exceeding in the aggregate five per centum of its paid-in capital and surplus in the stock of one or more corporations chartered or incorporated under the laws of the United States or of any state thereof, and, regardless of its location, principally engaged in such phases of international or foreign financial operations as may be necessary to facilitate the export of goods, wares or merchandise from the United States or any of its dependencies or insular possessions to any foreign country; **provided, however,** that in no event shall the total investments, authorized by this section by any bank exceed ten per centum of its paid-in capital and surplus; **provided, also,** that such investments may be carried in either the commercial, savings or trust department, or may be apportioned to any two or all three of such departments of any departmental state bank."

Act of the Legislature of California, approved June 3, 1921; in effect August 3, 1921.

(d) International Banking Corporations—When authorized by the previous written consent of the superintendent of banks, three or more persons may organize a corporation for the purpose of engaging in international or foreign banking or other international or foreign financial operations, or in banking or other financial operations in a dependency or insular possession of the United States, either directly or through the agency, ownership, or control of local institutions in foreign countries, or in such dependencies or insular possessions and to act when required by the secretary of the treasury of the United States as fiscal agents of the United States.

Such persons shall execute articles of incorporation which shall specify in general terms the objects for which the association is formed and may contain any other provisions not inconsistent with law which the corporation may see fit to adopt for the regulation of its business and the conduct of its affairs.

No corporation shall be organized under the provisions of this act with a capital stock of less than two million dollars, one-quarter of which must be paid in before the corporation may be authorized to begin business, and the remainder of the capital stock of such corporation shall be paid in installments of at least ten per centum of the whole amount to which the corporation shall be limited as frequently as one installment at the end of each succeeding two months from the time of the commencement of its business operations until the whole of the capital stock shall be paid in.

Act of the Legislature of California, approved June 3, 1921; in effect August 3, 1921.



twenty-five per centum of the capital and surplus of any such bank may be at any one time invested in the capital stock of such trust company or such other corporation; *and provided, further*, that no such trust company shall engage in or combine the business of a commercial bank or a savings bank or a title insurance company.

(b) *Stock of Safe Deposit Corporation.*—Any bank, with the previous written consent of the superintendent of banks, may purchase or otherwise acquire and hold, the whole or any part of the capital stock of not more than one corporation authorized and empowered to conduct a safe deposit business, which such corporation is organized and existing under the laws of this state and doing business in the same city in which the principal place of business of such bank is located; *provided, however*, that not more than an amount equal to ten per centum of the capital and surplus of any such bank may be at any one time invested in the capital stock of such safe deposit corporation.

Act of the Legislature, approved May 15, 1919;  
in effect July 22, 1919.

Section 1069.—DEPOSIT OF FUNDS IN ANOTHER BANK.—No bank shall deposit any of its funds in any other bank, except a federal reserve bank, unless such other bank has been nominated as a depository for its funds by the vote of a majority of the directors or trustees of the bank making the deposit, and such other bank has been designated by the superintendent of banks as such depository.

The superintendent of banks may in his discretion revoke such a designation.

Act of the Legislature, approved May 15, 1919;  
in effect July 22, 1919.

Section 1070.—NATIONAL BANKING ASSOCIATION UNDER FEDERAL RESERVE ACT.—Any national banking association, whose principal place of business is in this state, is hereby authorized to act in fiduciary capacities in all respects as provided by the acts of congress, approved

December 23, 1913, and amendments thereof, commonly known as the federal reserve act, and all acts herein provided to be performed by the state treasurer, the superintendent of banks or other public officials for or in respect of trust companies, shall be performed for such national banking association equally with trust companies. Every such national banking association which shall be authorized to exercise said fiduciary powers, and which has qualified by making the deposit of securities required by the law of this state, may act, or may be appointed by any court to act in any such capacity in like manner as an individual. The superintendent of banks shall inspect and examine the books, records and assets of the trust department of each national banking association which conducts a trust department in this state to the same extent that the said superintendent of banks exercises visitorial supervision over trust companies organized and existing under the laws of this state.

(a) *Charge by State Banking Department for Services.*—The charge by the state banking department for all services rendered to any national banking association by the superintendent of banks, in accordance with the provisions of this section, shall be paid by the national banking association requiring such services. Such charge for services shall be determined by the superintendent of banks, and shall be no higher than the charge for a similar service to trust companies organized under the laws of this state.

The cost of all regular and ordinary service shall be calculated upon the amount of the securities deposited by each such national bank with the treasurer of the state for the due execution and faithful performance of its court and private trusts at the same ratio as is applied to the capital and surplus of trust companies organized under the laws of this state in determining the cost to them for such services.

Act of the Legislature, approved May 15, 1919;  
in effect July 22, 1919.



Section 1071.—AUTHORITY TO BECOME MEMBER OF FEDERAL RESERVE BANK.—Any bank is hereby authorized and empowered to become a member of a federal reserve bank.

Nothing in this act shall prohibit any such bank from becoming a member of a federal reserve bank, in the manner provided in the federal reserve act, nor from investing any part of its capital or surplus or reserve fund in the capital stock of such federal reserve bank, in accordance with the terms and provisions of such federal reserve act; *provided*, that such investment shall in no case exceed the minimum amount required to join or associate itself with or maintain membership in such federal reserve bank; *provided, also*, that such investment may be carried in either the commercial, savings, or trust department, or may be apportioned to any two or all three of such departments of any departmental state bank member.

Any bank joining or associating itself with such federal reserve bank shall have and exercise all powers, not in conflict with the laws of this state, which are conferred upon any member bank in any such federal reserve bank, by the provisions of the federal reserve act and the regulations of the federal reserve board. Such member bank and its directors, officers and stockholders shall continue to be subject, however, to all liabilities and duties imposed upon them by the bank act and by any other law of this state.

Any bank which shall have become a member of a federal reserve bank shall be subject to the examinations required under the terms of the federal reserve act, and the superintendent of banks may, in his discretion, accept such examination in lieu of the examination required under the provisions of this act, and he, his agents and employees, may furnish to the federal reserve board, the federal reserve bank, or to examiners duly appointed by the federal reserve board or the federal reserve bank, copies of all examinations made, and may disclose to such

federal reserve board, federal reserve bank, or examiner, any information with reference to the condition or affairs of state bank members.

Act of the Legislature, approved May 15, 1919;  
in effect July 22, 1919.

Section 1072.—BANK CONVERTING INTO NATIONAL BANKING ASSOCIATION.—Nothing in this act shall prevent or prohibit any bank from converting into a national banking association under the provisions of section five thousand one hundred fifty-four of the United States revised statutes, or section eight of the federal reserve act, or any other federal or state law; *provided, however*, that no savings bank and no departmental bank having a savings department, organized and existing under the laws of the State of California, shall convert into a national banking association except upon the following conditions:

1. Coincident with its application to the comptroller of the currency, any such savings or departmental bank shall file with the superintendent of banks formal notice of intention to convert into a national banking association

2. Prior to conversion, any such savings or departmental bank shall place in the hands of the superintendent of banks—

(a) A constructive notice for newspaper advertisement, directed to its savings depositors, of the fact of conversion;

(b) Actual notice addressed to each and every savings depositor, at his or her last known address, enclosed in stamped and addressed envelopes ready for mailing, this notice to be as follows:

“You are hereby notified that the undersigned, formerly the....., now the....., has converted from a banking corporation existing under the laws of California into a national banking association; and has therefore ceased to be under the jurisdiction and

the direction of the California state banking department and the bank act of California, and is now under the jurisdiction and control of the federal reserve act and the national act." No other matter may be enclosed with this notice unless by permission of the superintendent of banks.

3. Upon conversion said bank shall file with the superintendent of banks a copy of its authorization as a national banking association, certified by the comptroller of the currency; and shall surrender to the superintendent of banks its license as a state banking corporation.

4. Immediately following the conversion of a state bank, the superintendent of banks shall cause the publication of the notice provided in subdivision (a) of paragraph two of this section; same to be at least once a week for four successive weeks in a newspaper of general circulation, printed and published in every town where said bank transacts its business, and if there be no such paper in any such town or towns, then in the county where such bank transacts its business, and the superintendent of banks shall cause to be mailed the notices provided in subdivision (b) of paragraph two of this section. The advertisement shall be at the expense of the converting bank, prepaid to the department.

Act of the Legislature, approved May 15, 1919;  
in effect July 22, 1919.

Section 1073.—FOREIGN BANKING.—Any bank possessing a capital and surplus of one million dollars or more may file application with the superintendent of banks for permission to exercise, upon such conditions and under such regulations as he may prescribe, either or both of the following powers:

First. To establish branches in foreign countries or in dependencies or insular possessions of the United States for the furtherance of the foreign commerce of this state and of the United States.

Second. To invest an amount not exceeding in the aggregate ten per centum of its paid-in capital stock and surplus in the stock of one or more banks or corporations chartered or incorporated under the laws of the State of California, and principally engaged in international or foreign banking or banking in a dependency or insular possession of the United States either directly or through the agency, ownership or control of local institutions in foreign countries, or in such dependencies or insular possessions.

Such application shall specify the name and capital of the bank filing it, the powers applied for and the place or places where the banking operations proposed are to be carried on. The superintendent of banks shall have power to approve or to reject such application in whole or in part if for any reason the granting of such application is deemed inexpedient, and shall also have power from time to time to increase or decrease the number of places where such banking operations may be carried on.

(a) *Information Regarding Foreign Branches.*—Every bank operating foreign branches shall be required to furnish information concerning the condition of such branches to the superintendent of banks upon demand, and every bank investing in the capital stock of banks or corporations described under subparagraph two of the first paragraph of this section shall be required to furnish information concerning the condition of such banks or corporations to the superintendent of banks upon demand, and the superintendent of banks may order special examinations of the said branches, banks or corporations at such time or times as he may deem best. The cost of such special examinations shall be paid by said branches, banks or corporations.

(b) *Regulations by Superintendent.*—Before any bank shall be permitted to purchase stock in any such corporation the said corporation shall enter into an agreement or undertaking with the superintendent of banks to restrict its operations or conduct its business in such



manner or under such limitations and restrictions as the said superintendent of banks may prescribe for the place or places wherein such business is to be conducted. If at any time the superintendent of banks shall ascertain that the regulations by him are not being complied with, said superintendent of banks shall be authorized and shall have power to institute an investigation of the matter and to send for persons and papers, subpoena witnesses and administer oaths in order to satisfy himself as to the actual nature of the transactions referred to. Should such investigation result in establishing the failure of the corporation in question, or of the bank or banks which may be stockholders therein, to comply with the regulations laid down by the said superintendent of banks, such banks may be required to dispose of stockholdings in the said corporation upon thirty days' notice, and in the event of their noncompliance with such order the superintendent of banks may institute proceedings for forfeiture of license.

Every such bank shall conduct the accounts of each foreign branch independently of the accounts of other foreign branches established by it and of its home office, and shall at the end of each fiscal period transfer to its general ledger the profit or loss accruing to each branch as a separate item.

Act of the Legislature, approved May 15, 1919;  
in effect July 22, 1919.

Section 1074.—PURCHASE OF REAL OR PERSONAL PROPERTY BY SAVINGS BANKS.—Any savings bank may purchase, hold and convey real or personal property as follows:

1. The lot and building in which the business of the bank is carried on; furniture and fixtures, vaults and safe deposit vaults and boxes necessary or proper to carry on its banking business; such lot and building, furniture and fixtures, vaults and safe deposit vaults and boxes shall not, in the aggregate, be carried on the books of such

bank as an asset to an amount exceeding its paid-up capital and surplus; and hereafter, the authority of a two-thirds vote of all of the directors shall be necessary to authorize the purchase of such lot and building, or the construction of such building.

2. Such as may have been mortgaged, pledged or conveyed to it in trust for its benefit in good faith, for money loaned in pursuance of the regular business of the corporation.

3. Such as may have been purchased at any sales under pledge, mortgage or deed of trust made for its benefit for money so loaned and such as may be conveyed to it by borrowers in satisfaction and discharge of loans made thereon.

(a) *Limitations on Purchase of Personal Property.*—No savings bank shall purchase, own, or sell personal property, except such as may be requisite for its immediate accommodation for the convenient transaction of its business, notes or bonds secured by trust deeds or mortgages on real estate, bonds, securities or evidences of indebtedness, public or private, gold or silver bullion and United States mint certificates of ascertained value, and evidences of debt issued by the United States.

(b) *Purchase of Bonds.*—No savings bank shall purchase, own, hold or convey bonds, securities or evidences of indebtedness, public or private, except as follows:

(a) Bonds or interest-bearing notes or obligations of the United States, or those for which the faith and credit of the United States are pledged for the payment of principal and interest, or those issued under authority of the United States;

(aa) Bonds or interest-bearing notes or obligations of England or the United Kingdom of Great Britain and Ireland, or France, or the Dominion of Canada, or those for which the faith and credit of any one or more of said countries are pledged for the payment of principal and interest; or bonds or interest-bearing notes or obligations of any other foreign country or government, which bonds

Section 1074, page 798, "Business Law for Business Men"—(a) Bonds or interest-bearing notes or obligations of any foreign country or government, or those for which the faith and credit of any foreign country are pledged, for the payment of principal and interest, may be purchased by a savings bank.

(b) Section 1074, page 799—Applying to bonds or stocks or notes, specified in sub-division (c) on page 799, the law has been changed to read "twenty-five years previous to making such investment."

(c) Section 1078, page 822—Any savings bank may deposit with any one bank not more than \$25,000 without the permission of the superintendent of banks.

Act of the Legislature of California, approved June 3, 1921; in effect August 3, 1921.

Section 1225, page 936, "Business Law for Business Men"—In lines 4 and 16, change the words "fifteen hundred dollars" so as to read "two thousand five hundred dollars."

Act of the Legislature of California, approved May 16, 1921, in effect July 16, 1921.





or interest-bearing notes or obligations shall have first been approved by the superintendent of banks in writing;

(b) Bonds of this state, or those for which the faith and credit of the State of California are pledged for the payment of principal and interest, or those of any county, city and county, city or school district of this state;

(c) Bonds or stocks or notes of any state in the United States that has not, within five years previous to making such investment by such bank, defaulted in the payment of any part of either principal or interest, or those of any county, city and county, city or town, in any state of the United States other than the State of California, issued under authority of any law of such state, which county, city and county, city or town, had, as shown by the federal or state census next preceding such investment, a population of more than twenty thousand inhabitants; *provided, however*, that the entire bonded indebtedness of such county, city and county, city or town, including such issue of bonds or stocks or notes, does not exceed fifteen per centum of the value of the taxable property therein as shown by its last equalized assessment roll; *and provided, further*, that such county, city and county, city or town, or the state in which it is located has not defaulted in payment of any part of either principal or interest due upon any legally authorized bond or stock or note issue within five years next preceding such investment;

(d) Bonds of any district organized under the laws of the State of California which are required to be and are investigated and approved by a commission now or hereafter authorized by a law of this state to conduct such investigation and give such approval and by authority of which approval said bonds are declared to be legal investments for savings banks;

(e) Bonds of any district organized under the laws of the State of California not otherwise provided for in this section; or those of any mutual water company organized under the laws of this state and operating wholly within

this state; *provided*, that all bonds specified in this paragraph shall first be certified by the superintendent of banks after an investigation in manner and form as is provided for by section sixtyone *a* of this act; *and provided, further*, that no bonds of any mutual water company shall be certified by the superintendent of banks unless the company issuing said bonds shall have been in continuous operation for a period of five years next preceding the application for said certificate and shall have served not less than seventy-five per centum of the lands entitled to service by said mutual water company for a period of not less than three years next preceding the application for said certificate;

(f) (1) Bonds of any railroad corporation incorporated under the laws of the State of California and operating exclusively therein; *provided*, said corporation has met net earnings for the period herein fixed amounting to at least one and one-fourth times the interest on all its outstanding mortgage indebtedness; or,

(2) Bonds of any railroad corporation incorporated under the laws of any state in the United States, operating at least five hundred miles of standard gauge track exclusive of sidings; *provided*, said corporation has had net earnings for the period herein fixed amounting to at least one and one-half times the interest on all its outstanding mortgage indebtedness; or,

(3) Bonds of any railroad corporation, the payment of which has been guaranteed, both as to principal and interest, by a railroad corporation meeting the requirements of either subdivision (1) or (2) of paragraph (f) of this section; *provided*, that such guaranteeing corporation has had for the period herein fixed net earnings amounting to at least one and one-half times the interest on all its outstanding mortgage indebtedness and, in addition thereto, sufficient, taken with the earnings of all corporations whose bonds it has guaranteed, to qualify as investments for savings banks, as in this section provided, all such guaranteed bonds; *provided*, that the

excess of income of any corporation whose bonds have been so guaranteed, over the amount required by this section for such corporation, shall not apply to or be included in determining the income so required; *provided, further*, that the guarantee of such bonds hereafter guaranteed must establish a lien upon all the operating properties of the guaranteeing corporation, which lien must take precedence over any subsequent issues of mortgage obligations by said guaranteeing corporation.

In determining the income of any corporation specified in paragraph (f) of subdivision three of this section, there shall be included the income of any corporation or corporations out of which it shall have been formed through consolidation or merger, and of any corporation or corporations, the entire business and income producing property of which the corporation issuing such bonds has wholly acquired.

(c) *Security*.—All bonds authorized for investment by paragraph (f) of subdivision three of this section must be secured by a mortgage or deed of trust which is, at the time of making such investment, either

I. A closed first mortgage or deed of trust; or,

II. A first mortgage or deed of trust containing provisions restricting the issuance of further bonds until such time as the income of said corporation shall have been at least sufficient, during the twelve months next preceding the issuance of any additional bonds, to meet the earning requirements specified in the respective subdivisions of this paragraph applicable to such corporation after including the additional bonds then proposed to be issued; or,

III. A refunding mortgage or deed of trust providing for the retirement of all prior lien mortgage debts of said corporation, and restricting the issuance of further bonds until such time as the income of said corporation shall have been at least sufficient, during the twelve months next preceding the issuance of any additional bonds, to meet the earning requirements specified in the respective

subdivisions of this paragraph applicable to such corporation after including the additional bonds then proposed to be issued; or,

IV. An underlying or divisional closed mortgage or deed of trust of property which forms a part of the operating system of the corporation then owning said property. In the case of bonds secured by an underlying or divisional closed mortgage or deed of trust, the net income required by this section shall be based exclusively upon the income, maintenance charges, operating expenses, taxes, and mortgage indebtedness of or against the property covered by such underlying or divisional closed mortgage or deed of trust, or, if such income, maintenance charges or operating expenses can not be definitely ascertained, on the proper proportionate share of such property in the general income, maintenance charges, operating expenses, and taxes of the corporation then owning such property and on the mortgage indebtedness of or against the property covered by such underlying or divisional closed mortgage or deed of trust; *provided, however*, that if the payment of the bonds secured by such underlying or divisional closed mortgage or deed of trust shall be guaranteed or assumed by the corporation then owning the property securing the same, such bonds shall be legal investments for savings banks, if the net income of such corporation from all sources shall equal the amount herein required, notwithstanding any insufficiency of the income derived from the property covered by such underlying or divisional closed mortgage or deed of trust to meet the requirements of this section.

No savings bank shall purchase the bonds of any railroad corporation deriving less than twenty per centum of its gross receipts from passenger revenues.

(g) Bonds of any street railroad corporation; or of any gas; water; pipe line; light; power; light and power; gas, light and power; electrical; telephone; telegraph; or telephone and telegraph corporation or of any other



“public utility” incorporated under the laws of the State of California; and

(1) Operating exclusively in the State of California, provided said corporation has had, for the period herein fixed, net earnings amounting to one and one-half times the interest on all its outstanding mortgage indebtedness; or,

(2) Operating its property in part within the State of California, provided said corporation has had, for each of its two fiscal years next preceding such investment, net earnings amounting to one and one-half times the interest on all its outstanding mortgage indebtedness; or,

(3) The payment of which is guaranteed, both as to principal and interest, by a public utility corporation meeting the requirements of either subdivision (1) or (2) of paragraph (g) of this section, provided that such guaranteeing corporation has had for the period required in the respective subdivisions of this paragraph relating thereto, net earnings amounting to at least one and one-half times the interest on all of said guaranteeing corporation's outstanding mortgage indebtedness, and, in addition thereto, sufficient, taken with the earnings of all corporations whose bonds it has guaranteed, to qualify as investments for savings banks, as in this section provided, all such guaranteed bonds; *provided*, that the excess of income of any corporation whose bonds have been so guaranteed, over the amount required by this section for such corporation, shall not apply to or be included in determining the income so required; *provided*, *further*, that the guarantee of such bonds hereafter guaranteed must establish a lien upon all the operating properties of the guaranteeing corporation which lien must take precedence over any subsequent issues of mortgage obligations by said guaranteeing corporation.

In determining the income of any corporation specified in paragraph (g) of subdivision three of this section, there shall be included the income of any corporation or corporations out of which it shall have been formed

through consolidation or merger, and of any corporation the entire business and income producing property of which the corporation issuing such bonds has wholly acquired.

All bonds authorized for investment by paragraph (g) of subdivision three of this section must be secured by a mortgage or deed of trust which is at the time of making such investment; either

I. A closed first mortgage or deed of trust; or,

II. A first mortgage or deed of trust containing provisions restricting the issuance of further bonds until such time as the income of said corporation shall have been at least sufficient, during the twelve months next preceding the issuance of any additional bonds, to meet the earning requirements specified in the respective subdivisions of this paragraph applicable to such corporation after including the additional bonds then proposed to be issued; or,

III. A refunding mortgage or deed of trust providing for the retirement of all prior lien mortgage debts of said corporation and restricting the issuance of further bonds until such time as the income of said corporation shall have been at least sufficient, during the twelve months next preceding the issuance of any additional bonds, to meet the earning requirements of such corporation after including the additional bonds then proposed to be issued; or,

IV. An underlying or divisional closed mortgage or deed of trust of property which forms a part of the operating system of the corporation then owning said property. In the case of bonds secured by an underlying or divisional closed mortgage or deed of trust, the net income required by this section shall be based exclusively upon the income, maintenance charges, operating expenses, taxes and mortgage indebtedness of or against the property covered by such underlying or divisional closed mortgage or deed of trust, or, if such income, maintenance charges or operating expenses can not be

definitely ascertained, on the proper proportionate share of such property in the general income, maintenance charges, operating expenses and taxes of the corporation then owning such property and on the mortgage indebtedness of or against the property covered by such underlying or divisional closed mortgage or deed of trust; *provided, however*, that if the payment of the bonds secured by such underlying or divisional closed mortgage or deed of trust shall be guaranteed or assumed by the corporation then owning the property securing the same, such bonds shall be legal investments for savings banks, if the net income of such corporation from all sources shall equal the amount herein required, notwithstanding any insufficiency of the income derived from the property covered by such underlying or divisional closed mortgage or deed of trust to meet the requirements of this section.

(h) Notes or bonds secured by first mortgage or deed of trust or other first lien upon real estate, improved or unimproved; *provided*, that the entire note or bond issue shall not exceed sixty per centum of the market value of such real estate, or such real estate with improvements, taken as security; *and provided, further*, in case the said note or bond issue is created for a building loan on real estate, that at no time shall the entire outstanding note or bond issue exceed sixty per centum of the market value of the real estate and the actual cost of the improvements thereon taken as security.

In determining the market value of any real estate under the provisions of paragraph (h), subdivision three of this section, where such real estate, improved or unimproved, consists of oil or other mineral or timber land, the value represented by such oil or other mineral or timber shall not be included in fixing such market value. Nothing herein contained shall prevent savings banks from making loans secured by mortgage or deed of trust upon lands wherein redwood timber is included in fixing the market value thereof.

(i) Collateral trust bonds or notes when secured by either:

(1) Deposit of bonds authorized for investment by this section of a market value at least fifteen per centum in excess of the par value of the collateral trust bonds or notes issued; or,

(2) Deposit of bonds authorized for investment by this section and other securities of a combined market value at least twenty per centum in excess of the par value of the collateral trust bonds or notes issued; *provided*, that the par value of said collateral trust bonds or notes shall in no case exceed the market value of that portion of the security represented by bonds authorized for investment by this section.

(3) Deposit of any notes or bonds authorized for investment by this section and other securities of a combined market value of at least thirty per centum in excess of the par value of the collateral trust bonds or notes issued; *provided*, that the par value of such collateral trust bonds or notes issued shall in no case exceed the market value of that portion of the security represented by notes or bonds authorized for investment by this section; *provided, further*, that the collateral pledged consist of bonds authorized for investment by this section of the market value of at least seventy-five per centum of the par value of such collateral trust bonds or notes issued.

(j) Bonds legal for investment by savings banks in the states of New York or Massachusetts; *provided, however*, that as to bonds of the character specified in paragraph (c) of subdivision three of this section, such bonds shall also conform to the requirements of such paragraph.

(k) Notes or bonds secured by mortgage or deed of trust, payment of which is guaranteed by a policy of mortgage insurance, and mortgage participation certificates, issued by a mortgage insurance company.

"Net earnings" as used in this section shall be deemed to mean the amount remaining after deducting from the gross earnings all taxes, maintenance charges and oper-



ating expenses except depreciation charges, sinking fund charges and interest on indebtedness.

Unless herein otherwise expressly provided the period for which any corporation must have "net earnings" sufficient to qualify its bonds as an investment for savings banks under this section shall be either the fiscal year of such corporation next preceding the investment therein by any savings bank or twelve consecutive months in the fourteen months next preceding such investment.

(d) *Bonds, Etc., Certified by Superintendent of Banks.*—No notes, bonds, or other securities shall be deemed to come within or conform to the requirements of either of paragraphs (f), (g), (h), or (i) of subdivision three of this section, unless such notes, bonds or other securities shall, in the manner provided in this act, have been certified by the superintendent of banks to come within and fully conform to the requirements of one or the other of said paragraphs; *provided, however*, that any bank may, without such certification by the superintendent of banks, purchase any note or bond or issue of notes or bonds provided for in said paragraph (h), whenever such purchase constitutes the entire amount of notes or bonds executed by the makers thereof and secured by the same real estate; *provided, also*, that no savings bank shall hold any such notes or bonds unless such holding constitutes the entire issue thereof at any time outstanding; *and provided, also*, that nothing in this paragraph shall be construed to permit savings banks to invest in notes or certificates evidencing participation in any mortgage on real estate unless in this act specifically authorized or in or on any form of obligation secured by any undivided interest in real estate designed to distribute the obligation so secured.

(e) *Legality of Previous Investments Not Affected.*—The legality of investments heretofore lawfully made pursuant to the provisions of this section, or of any law of this state as it existed on and subsequent to July 1, 1909, shall not be affected by any amendments to this

section or this act; nor shall any such amendments require the changing of investments once lawfully made under this act.

(f) *Investment Value of Bonds.*—Any bonds authorized by this section as a legal investment for savings banks may be carried on the books of said bank at their investment value, based on their market value at the time they were originally bought, unless the superintendent of banks shall require any or all of the bonds which may thereafter have a market value less than the original investment value to be written down to such new market value, which shall be done gradually if practicable and in such manner as he may determine; or he may, by a plan of amortization to be determined by him, require such gradual extinction of premium as will bring such bonds to par at maturity.

When it shall be necessary to prevent loss to any savings bank on an obligation owned or on a debt previously contracted in good faith, it may, with the previous written consent of the superintendent of banks, purchase or acquire bonds of any railroad corporation incorporated under the laws of the state of California and operated exclusively therein, notwithstanding such bonds do not conform to the requirements in this section contained; *provided*, any bonds so purchased or acquired must be sold for the best price obtainable by any bank within five years after such purchase or acquisition.

(g) *Bonds of Public Utilities.*—No savings bank shall hereafter purchase or loan money upon any bond, note or other evidence of indebtedness, issued by any “public utility,” subject to the jurisdiction, regulation or control of the railroad commission of this state under the provisions of the “public utilities act,” approved December 23, 1911, and acts amendatory thereof or supplemental thereto, unless each such bond, note or other evidence of indebtedness was either:

(a) Issued prior to the taking effect of the “public utilities act;” or,

(b) Issued under authority of the railroad commission, in accordance with the provisions of said act; or,

(c) A note issued for a period not exceeding twelve months, in accordance with the provisions of subdivision (b) of section fifty-two of said act.

(h) *State Does Not Guarantee Validity of Bonds.*—No provision of this act, and no act or deed, done or performed under or in connection therewith, and no finding made or certificate issued under any provision thereof, shall be held or construed to obligate the State of California to pay, or be liable for the payment of, or to guarantee in any manner whatsoever, the regularity or the validity of the issuance of any stock or bond certificate, or bond, note, or other evidence of indebtedness certified under any provision of this act, by the superintendent of banks.

(i) *Advertisement of Bonds as Legal Investment.*—It shall not be lawful for any individual, firm, association, bank, trust company, stock company, copartnership or corporation to advertise by newspaper or circular or in any other manner that any securities are legal investments for savings banks in this state, or to use any advertisement which might lead the public to believe that any securities conform to the requirements of law relating to investments by savings banks, unless such securities are such as are specified in this act, or shall, in the manner provided in this act, have been certified by the superintendent of banks to come within and fully conform to the requirements of one or the other of paragraphs (f), (g), (h), or (i), or unless such advertisement shall have been approved in writing by the superintendent of banks prior to publishing, circulating or otherwise issuing the same. Any individual, firm, association, bank, trust company, stock company, copartnership or corporation who shall advertise any securities in violation of the provisions of this paragraph shall be guilty of a misdemeanor and shall be punishable by a fine not exceeding one thousand dollars or by imprisonment in a county jail



not exceeding one year or by both such fine and imprisonment.

(j) *Superintendent of Banks May Investigate Bonds.* The superintendent of banks shall have power, when any issue of bonds or securities is presented to him for that purpose, to investigate and ascertain whether such bonds or securities come within and fully conform to all the requirements of this act. He may also investigate and ascertain for what period of time, and upon what conditions, any franchise granted to or held by any corporation issuing any such bonds or securities will remain in force, and any other facts or conditions bearing upon the value or sufficiency of such bonds. The superintendent of banks may accept and act upon the opinions and appraisements of any attorneys, engineers, or appraisers which may be presented by such person or corporation, so applying, and the reports of any of the executive officers of the corporation issuing such bonds or securities, on any question of fact concerning or affecting such bonds or securities, the security thereof, the franchise conditions herein mentioned, or the financial condition of the corporation issuing the same. In lieu of or in addition to such opinions, appraisements and reports, the superintendent of banks may, if he deems proper, have any or all such matters passed upon and certified to him by attorneys, engineers, appraisers or accountants of his own selection at the expense of the applicant. If the superintendent of banks shall find from such investigation that the bonds or securities so presented come within and fully conform to all the requirements of this act, and is satisfied from such investigation as to such franchise conditions, he shall so certify unless for any reason he shall be of the opinion that such bonds are not a safe or proper investment for savings banks, and in such event or if such bonds shall fail to meet the requirements of this act such certificate must be refused. The superintendent of banks also shall have power to investigate and ascertain the status and sufficiency as invest-



ments for savings banks of any bonds specified. If upon such investigation it shall be determined in the opinion of the superintendent of banks that any bond specified constitutes a proper investment for savings banks he shall so certify.

(k) *Certificates Revoked.*—Any certificate issued by the superintendent of banks under authority of the provisions of this section may be revoked at any time in his discretion. Any certificate issued in relation to notes or bonds specified in paragraphs (f), (g) or (i) shall expire not later than three months after the end of the then current fiscal year of the corporation issuing such notes or bonds.

(l) *Renewal or Extension of Certificate.*—Any such certificate so expiring may be renewed or extended by the superintendent of banks without application therefor from such corporation or other interested parties if he shall be satisfied that the notes or bonds referred to in said certificate are in conformity with the then requirements of this act.

(m) *Expenses.*—The actual expense of investigating any issue of bonds or securities so presented shall be paid by the person, district or corporation presenting the same for investigation, and the superintendent of banks, before making such investigation, may require a cash deposit of such amount as he may deem necessary to cover such expense. The superintendent of banks shall keep an official list of all bonds and securities certified by him.

Act of the Legislature, approved May 15, 1919;  
in effect July 22, 1919.

Section 1075.—SAVINGS BANKS NOT TO TRADE IN REAL PROPERTY.—No savings banks shall, directly or indirectly, deal or trade in real or personal property in any other case or for any other purpose than is authorized by this act, and shall not contract any debt or liability for any purpose whatever other than for deposits, except as in

this section provided.

(a) *Drafts*.—Savings banks may pay regular depositors, when requested by them, by draft upon deposits to their credit with their banks, and charge current rate of exchange for such drafts.

(b) *Savings Banks Borrowing Money*.—No savings bank shall borrow money, or pledge or hypothecate any of its securities, except to meet the immediate demands of its own depositors, and then only in pursuance of a resolution adopted by a vote of a majority of its board of directors, duly entered upon their minutes, wherein shall be recorded the ayes and nays upon each vote; also with the written approval of the superintendent of banks, and he shall have the authority to fix the amount to be borrowed, the amount and character of the securities to be pledged or hypothecated, and the term and rate of interest thereon; *provided*, that any savings bank may, for the purpose of performing its functions and transacting its business as authorized by this act, rediscount, with or without guarantee or endorsement, with the federal reserve bank, its acceptances, notes or any other securities, available for rediscount with a federal reserve bank, in any amount up to but not exceeding its capital and surplus or reserve without consent of the superintendent of banks, and shall not be considered as borrowed money within the meaning of this section; *provided, also*, that savings banks may, in the manner authorized by law, and without the previous approval of the superintendent of banks, borrow the public moneys of the United States, the State of California, the counties, cities and counties, and towns of said State of California and receive such public moneys on deposit; *provided, also*, that savings banks may, in the manner authorized by law, and without the previous approval of the superintendent of banks, borrow postal savings moneys of the United States, and receive such postal savings moneys on deposit; *and provided, further*, savings banks may borrow any amount, in addition to the amounts authorized

to be borrowed in this section, for the purpose of buying from the United States, United States bonds, United States treasury certificates, or notes or obligations of the United States, but only in pursuance of a resolution of a majority of its board of directors, duly entered upon their minutes, and without the previous approval of the superintendent of banks, but the fact of such transaction shall forthwith be reported in writing to the superintendent of banks. No excess loan made to any savings bank with or without pledge of assets shall be invalid or illegal as to the lender.

Section 1076.—LOAN TO DIRECTOR OR OFFICER.—No loan shall be made, for himself or as agent or partner of another, directly or indirectly, to any director or officer of any savings bank by such bank, or on the endorsement, surety or guaranty of any such officer or director, except that loans may be made to any corporation in which any director or officer of such savings bank may own or hold a minority number of shares of stock, upon authorization of a majority of all the directors of such savings bank and the affirmative vote of all directors of such savings bank present at the meeting authorizing such loan; *provided, however*, that such loan shall in all other respects conform to and comply with all other provisions of this act. Such interested director or officer shall not vote or participate in any manner in the action of the board on such loan; *provided, also*, that by and with the consent of the superintendent of banks previously obtained in writing, all directors may vote upon such a loan made by one bank to another bank where the entire capital stock of one is owned by or held in trust for the stockholders of the other bank and where all or a majority of the board of directors of each of said banks are composed of the same persons. Such authorization shall be entered upon the records or minutes of such savings bank. The fact of making such loan, the names of the directors authorizing such loan, the corporate name of the bor-

rower, the name of each director or officer of such bank who is a member, stockholder, officer, or director of the corporation to which such loan is made, the amount of stock held by him in such borrowing corporation, the amount of such loan, the rate of interest thereon, the time when the loan will become due, the amount, character and value of security given therefor and the fact of final payment, when made, shall be forthwith reported in writing by the cashier or secretary of such savings bank to the superintendent of banks. No loan may be made to any corporation, a majority of the stock of which is owned or controlled by any one or more of the directors or officers of such savings bank, except with the previous consent of the superintendent of banks.

(a) *Loan to Agent or Employee.*—A loan may be made to any agent or employee, other than an officer or director, of any savings bank by such bank upon authorization of a majority of all the directors of such savings bank and an affirmative vote of all directors of such savings bank present at the meeting authorizing such loan; *provided, however*, that such loan shall in all respects conform to and comply with all other provisions of this act. Such authorization shall be entered upon the records or minutes of such savings bank. The fact of making such loan, the names of the directors authorizing such loan, the name of the borrower, the nature of his employment, the amount of such loan, the rate of interest thereon, the time when the loan will become due, the amount, character and value of the security given therefor, and the fact of final payment, when made, shall be forthwith reported in writing by the cashier or secretary of such savings bank to the superintendent of banks. Any officer or director of any savings bank, who knowingly procures a loan from such savings bank, contrary to the provisions of this section, shall be guilty of a felony. In case of the neglect or failure of the secretary or cashier of any such bank to report to the superintendent of banks, as herein provided, any of the facts so required to be reported, or



in case of the neglect or failure of the secretary or cashier of any such bank to report to the superintendent of banks any loan made contrary to the provisions of this section, the bank shall be liable therefor and shall forfeit to the people of the State of California twenty-five dollars per day for each day, or part thereof, during which such neglect or failure continues.

This section shall not apply to any loan made to a religious corporation, club, or other membership corporation of which one or more directors, officers, agents or employees of such savings bank may be members or officers, but in which they have no financial interest.

(b) *Loans to Director on Security.*—Loans may be made to any director, other than an officer, directly or indirectly, or to any agent or employee of a savings bank on the security of United States bonds, United States treasury certificates, or interest-bearing notes, or obligations of the United States, or those for which the faith and credit of the United States are pledged for repayment of principal or interest, or those issued under authority of the United States, notwithstanding anything in this section contained, and such loans may be made in the usual manner of making loans in which no director of such bank is interested.

Section 1077.—LIMITATION ON LOANS.—1. No savings bank shall loan money except on adequate security of real or personal property, and no such loan shall be made for a period longer than ten years. No such loan shall be made on unsecured notes; *provided*, that a savings bank may discount or purchase bankers' or trade acceptances, notes, drafts and bills of exchange of the kind and character and maturities defined and made eligible for rediscount with a federal reserve bank; *provided*, also, that the same are accepted or endorsed without qualification by a bank or trust company, which bank or trust company has a paid-in capital of at least one million dollars; and *provided*, also, that a savings bank may dis-

count or purchase a bill which must comply with the following requirements:

(a) *Requirements for Bill of Exchange.*—It must be a bill issued by a solvent individual or firm or corporation engaged in mercantile or manufacturing business in the United States that makes statements of its condition duly ascertained and certified to by a public accountant. Copy of such a certified statement shall be on file in the office of the savings bank discounting or purchasing such bill in a file maintained for such purpose. Said statement shall have been issued within the preceding fourteen months and shall be the latest issued by said individual or firm or corporation. Said statement shall consist of a balance sheet showing quick assets, slow assets, permanent or fixed assets, current liabilities and accounts, short term loans, long term loans, capital and surplus. Accompanying said balance sheet shall be a copy of a statement from the borrower or public accountant concerning the following:

- (1) The nature of the business.
- (2) All contingent liabilities such as endorsements or guarantees.
- (3) Particulars respecting any mortgage debts and whether there is any lien on current assets.
- (4) The maximum and minimum liabilities of the individual, firm or corporation during the twelve months previous to the date of audit.

(b) It must be issued by an individual, firm or corporation whose net worth is not less than two times the amount of its outstanding liabilities, including any contingent liabilities arising from the rediscount of bills receivable or other accommodation endorsements, nor less than three hundred thousand dollars. The quick assets of said individual, firm or corporation, consisting of merchandise, finished, raw, and in the process of manufacture, accounts receivable, bills receivable, bonds or obligations of the government of the United States at the then market value of said bonds or obligations and cash,

shall not be less than two times its outstanding quick liabilities including any contingent liabilities arising from the rediscount of bills receivable or other accommodation endorsements, as shown by said statement.

(c) It must have a maturity of not more than six months.

(d) It must have arisen out of actual commercial transactions; that is, be a bill which has been issued or drawn for industrial or commercial purposes or the proceeds of which have been or are to be used for such purposes.

(b) *Bills Not Eligible for Discount or Purchase.*—No bill shall be eligible for discount or purchase by a savings bank, the proceeds of which have been used or are to be used for any of the following purposes:

(1) For investments of a merely speculative character whether made in goods or otherwise.

(2) Must not have been issued for carrying or trading in stocks, bonds or other investment securities, except bonds of the government of the United States, and must not cover merely investments.

(3) Must not be a bill of any individual, firm or corporation which has under pledge or hypothecation any of its personal assets.

The word “bill,” when used in this section, shall be construed to include notes, drafts, or bills of exchange, and the word “goods” shall be construed to include goods, wares or merchandise.

(c) *Credit Reports.*—Any savings bank purchasing or discounting such paper shall have a file maintained for the purpose, letters from banks and merchants or mercantile reports bearing upon the credit and standing of the person, firm, copartnership or corporation whose paper is under discount.

(d) *Limitation on Amount.*—No savings bank shall at any time acquire or hold, directly or indirectly, by discount or purchase, a combined total amount of bankers’ and trade acceptances, drafts and bills of ex-

change and bills of the character defined and limited by this section, greater than twenty per centum of the deposits of such bank, nor shall any savings bank at any time acquire or hold, directly or indirectly, by discount or purchase, an amount of bills, of the character defined and limited by this section, greater than twelve and one-half per centum of the deposits of such bank. No savings bank shall at any time acquire or hold, directly or indirectly, by discount or purchase, any such bankers or trade acceptances, drafts and bills of exchange from any one acceptor in an amount which shall exceed five per centum of the capital and surplus or reserve of such savings bank, nor shall any savings bank at any time acquire or hold, directly or indirectly, by discount or purchase, any such bills of any one person, firm, copartnership or corporation in an amount which shall exceed five per centum of the capital and surplus or reserve of such savings bank.

(e) *Loans on Bonds*.—2. No savings bank shall invest or loan an amount greater than fifty per centum of its actual paid-up capital and surplus on any one note or bond issue of the class specified in paragraph (h), or on the securities issued by any one mortgage insurance company of the class specified in paragraph (k), nor more than five per centum of its assets on any one bond issue of any other class, except bonds of the United States, or interest-bearing notes or obligations of the United States, or bonds of the State of California, bonds for which the faith and credit of the United States or of the State of California are pledged, or bonds of any county, city and county, city or school district in this state, or bonds of any irrigation district such as are legal for investment by savings banks.

3. No savings bank shall loan money:

(a) On bonds of the character specified in paragraphs (a), (aa), (b), (c) and (d), or on bonds of the character specified in paragraph (e), the principal and interest of which are to be paid in whole or in part by taxes levied



upon the property in the district issuing such bonds, unless such bonds shall have a market value at least ten per centum in excess of the amount loaned thereon; or,

(b) On bonds of the character specified in paragraphs (f), and (g) or on bonds or notes of the character specified in paragraph (i) of this act, when eligible as investments for savings banks pursuant to said section, or on bonds of the character specified in paragraph (e) other than those specified in the preceding paragraph of this section, unless such bonds or notes shall have a market value at least fifteen per centum in excess of the amount loaned thereon; or,

(c) On bonds legal for investment by savings banks in the states of New York or Massachusetts, unless such bonds shall have a market value at least fifteen per centum in excess of the amount loaned thereon; or,

(d) On notes or bonds of the character specified in paragraph (h) when certified as legal investments for savings banks, or on securities of the character specified in paragraph (k) of subdivision three of said section eligible for investment by savings banks, unless such bonds, notes or securities shall have a market value at least ten per centum in excess of the amount loaned thereon; or,

(e) On personal property unless such personal property shall have a market value at least fifty per centum in excess of the amount loaned thereon; or,

(f) On other bonds, or on capital stock of any corporation, unless such bonds or stock shall have a market value at least fifty per centum in excess of the amount loaned thereon; *provided, however*, that no loan shall be made upon the capital stock of any bank unless such bank has been in existence at least two years and has earned and paid a dividend on its capital stock.

(f) *Loans on Real Estate*.—4. No savings bank shall make any loan on security of real estate, except it be a first lien, and in no event to exceed sixty per centum of the market value of any real estate taken as security

except for the purpose of facilitating the sale of property owned by such savings bank; *provided*, that a second lien may be accepted to secure the repayment of a debt previously contracted in good faith; *and provided, also*, that any savings bank holding a first mortgage or deed of trust on real estate may take or purchase and hold or loan upon another and immediately subsequent mortgage or deed of trust thereon, but all such loans shall not exceed in the aggregate sixty per centum of the market value of the real estate securing the same; *provided, further*, that a savings bank may loan not to exceed ninety per centum of the face value of a mortgage which constitutes a first lien upon real estate, but in no event shall any such loan exceed ninety per centum of sixty per centum of the market value of the real estate covered by said mortgage or deed of trust.

(g) *Loans on Capital Stock of Corporations.*—5. No savings bank shall loan to any one borrower on the security of the capital stock of any corporation an amount exceeding ten per centum of the capital stock and surplus of such savings bank; *provided*, that all loans on the capital stock of any one corporation shall not exceed in the aggregate twenty-five per centum of the capital stock and surplus of such savings bank.

(h) *No Loans on Mining Stock.*—6. No savings bank shall purchase, invest or loan its capital, surplus or the money of its depositors, or any part of either, in mining shares or stock, and any president or managing officer who knowingly consents to a violation of any provision of this paragraph shall be guilty of a felony.

Section 1078.—TOTAL RESERVES OF SAVINGS BANKS.—Every savings bank or savings department of a bank shall at all times maintain total reserves equivalent to five per centum of the aggregate amount of its deposits, exclusive of United States, postal savings bank, state, county and municipal, and other public money deposits, which are secured as is required by law; at least two and one-half

per centum of such deposits shall be maintained as reserves on hand, which shall consist of gold bullion or any form of money or currency authorized by the laws of the United States, and two and one-half per centum of such deposits may be maintained as reserves on hand, which shall consist of bonds, or interest bearing obligations of the United States, of gold bullion, or any form of money or currency authorized by the laws of the United States, or may be maintained as reserves on deposit subject to call with any reserve depository; *provided, however*, that all or any part of the reserves may be deposited, subject to call, with a federal reserve bank in the district in which such bank is located; *provided, also*, that no savings bank or savings department shall be required to maintain reserves on hand in excess of four hundred thousand dollars, and when such reserves on hand reach that amount, the balance of total reserves necessary to make up the five per centum may be kept as reserves on deposit, subject to call, with any reserve depository.

(a) *Reserves of Member of Federal Reserve Bank.*—If any bank shall have become a member of a federal reserve bank, it shall at all times maintain the reserves required by the federal reserve act for time deposits, and in addition thereto shall be required to maintain a reserve of at least two per centum of its aggregate deposits, exclusive of United States, postal savings, state, county and municipal, and other public money deposits, which are secured as is required by law, which two per centum shall consist of gold bullion, or any form of money or currency authorized by the laws of the United States.

(b) *Failure to Maintain Reserves.*—If any savings bank shall fail to maintain its total reserves in the manner authorized by this section, it shall be subject to the penalty provided for commercial banks.

(c) *Dealings with Commercial Banks.*—No new loan shall be made during any deficiency in the total reserves. Deposits with any commercial bank, or commercial

department of a bank, on open account, as provided in this section, shall be permitted and shall not be construed as loans. Not more than five per centum of the deposits of any savings bank shall be deposited with any one bank, except with the consent of the superintendent of banks. Not more than fifteen per centum of the deposits of any savings banks shall be deposited with all commercial banks, except with the consent of the superintendent of banks. No savings bank or savings department shall receive deposits of other banks other than savings deposits and such deposits shall not be treated or considered as a part of the reserves on deposits of such depositing bank; *provided*, the sum so deposited shall not exceed thirty per centum of the paid-in capital and surplus of the depositing bank nor more than fifteen per centum of the paid-in capital and surplus of the depositary bank.

(d) *Power to Receive Liberty Bonds*.—Every savings bank shall have power to receive as depositary, or as bailee for safe keeping and storage, Liberty bonds or other bonds or securities issued by the United States government for war purposes or otherwise.

Act of the Legislature, approved May 15, 1919;  
in effect July 22, 1919.

Section 1079.—**LOANS OF COMMERCIAL BANKS**.—No commercial banks shall make any loans, directly or indirectly, to any person, firm, copartnership or corporation, in an amount which, including therein any extension of credit to such person, firm, copartnership or corporation, by means of letters of credit, or by acceptance of drafts for, or the discount or purchase of the notes, bills of exchange or other obligations of, such person, firm, copartnership or corporation, shall exceed the following percentage of its capital and surplus:

1. Ten per centum without security, except where such capital stock and surplus is not more than twenty-five thousand dollars, in which event an amount not to exceed twenty per centum of such capital stock and surplus may



Section 1079, page 822, "Business Law for Business Men"—FOREIGN DRAFTS OR BILLS OF EXCHANGE—Any commercial bank may accept drafts or bills of exchange drawn upon it having not more than three months sight to run, exclusive of days of grace, drawn under regulations to be prescribed by the superintendent of banks by banks or bankers in foreign countries or dependencies or insular possessions of the United States for the purpose of furnishing dollar exchange as required by the usages of trade in the respective countries, dependencies, or insular possessions; **provided, however,** that no commercial bank shall accept such drafts or bills of exchange referred to in this paragraph for any one bank to any amount exceeding in the aggregate ten per centum of the paid-up and unimpaired capital and surplus of the accepting bank unless the draft or bill of exchange is accompanied by documents conveying or securing title or by some other adequate security; **provided, further,** that no commercial bank shall accept such drafts or bills in an amount exceeding at any time the aggregate of one-half of its paid-up and unimpaired capital and surplus.

Act of the Legislature of California, approved June 3, 1921; in effect August 3, 1921.



be loaned without security, and where such capital stock and surplus is greater than twenty-five thousand dollars and does not exceed fifty thousand dollars, a sum not exceeding five thousand dollars may be loaned without security. Nothing herein shall prohibit any commercial bank from taking or receiving any kind, character, or amount of security whatsoever, either real or personal, for the protection of any loan made under the provisions of this subdivision, but no such loan or any part thereof shall be considered or construed as a secured loan unless the whole thereof is loaned upon security worth at least fifteen per centum more than the amount of such loan; or,

2. Fifteen per centum, in addition to the amount that may be loaned under the provisions of subdivision one of this section, upon security worth at least fifteen per centum more than the amount of such loan so secured; *provided*, the total amount which can be loaned under subdivisions one and two hereof cannot exceed twenty-five per centum in all; *provided, however*, that a separate note or notes shall be taken for the unsecured loans and a separate note or notes shall be taken for the secured loans, and the secured and unsecured loans shall not be combined in any way within one note, or notes; or,

3. Twenty-five per centum upon security worth at least fifteen per centum more than the amount of its loans so secured; *provided, however*, that when secured loans to this amount or any amount in excess of fifteen per centum are made, then no unsecured loans shall be permitted in addition to such secured loans; or,

4. Forty per centum, provided such loans are upon commercial or business paper actually owned by the person negotiating the same to such bank, and are endorsed by such person without limitation; *provided, however*, that in addition to the amounts permitted to be loaned by subdivisions one, two or three of this section, an amount may be loaned on the securities fixed by subdivision four of this section, which taken with the amounts so permitted by said subdivisions one, two or three will not exceed

forty per centum; *provided, also*, that the restrictions under this section shall not apply to bills of exchange or drafts, with bills of lading attached, drawn in good faith against actual existing values; *provided, further*, that any commercial bank, having first obtained in writing the consent of the superintendent of banks so to do and under such conditions and regulations as may be prescribed by him, may accept drafts or bills of exchange drawn upon it running for a period of not longer than six months, but no commercial bank shall accept such drafts or bills of exchange in an amount greater at any time in the outstanding aggregate than one-half of its capital and surplus; but such acceptance or acceptances must be drawn by a person, firm, copartnership or corporation engaged in agricultural, industrial or commercial business directly connected with the production, manufacture, purchase, sale or consignment of the goods involved in the transaction in which such acceptance originated; *provided, however*, that no such acceptance or acceptances to any one person, firm, copartnership or corporation shall exceed ten per centum of the capital and surplus of such bank.

None of the limitations or restrictions contained in the previous subdivisions of this section shall apply to loans, discounts or other extensions of credit secured by Liberty bonds or by other bonds or securities issued by the United States government, if the market value of such Liberty bonds or other securities exceeds by ten per centum the amount of any such loan, discount or other extension of credit.

Loans which are made upon security available for loans in a savings bank may be made in a commercial bank upon the same margin of security as is permitted to savings banks, anything in this section to the contrary notwithstanding, and all such loans shall be deemed to be secured loans within the meaning of this section.

(a) *Computing Liabilities to Commercial Banks.*—In computing the total liabilities of any person to a commer-



cial bank there shall be included all liabilities to the bank of any copartnership or unincorporated association of which he is a member, and any loans made for his benefit or for the benefit of such copartnership or unincorporated association; of any firm, copartnership or unincorporated association to a commercial bank there shall be included all liabilities of its individual members and all loans made for the benefit of such copartnership or unincorporated association or any member thereof; and of any corporation to a commercial bank there shall be included all loans made for the benefit of the corporation.

Section 1080.—LOANS TO OFFICER OF COMMERCIAL BANK.—No loan shall be made for himself or as agent or partner of another, directly or indirectly, to any officer of any commercial bank by such bank or on the endorsement, surety, or guaranty of any such officer; *provided*, that a loan may be made to a corporation of which any officer of a commercial bank, proposing to make such loan, is a minority stockholder, director, officer, agent or employee.

(a) *Loans to Director, Agent or Employee.*—Loans to any director, agent or employee other than an officer, or to any firm, copartnership or corporation of which any director, agent or employee other than an officer is a member, stockholder, director, officer, agent or other employee, or to any person, firm, copartnership or corporation on the endorsement, surety, or guaranty of any such director other than an officer, agent or other employee, can be made by any commercial bank; *and provided, further*, that a loan may be made or a line of credit may be given to any member of an advisory board or body of a commercial bank, not otherwise an officer of such bank, or a loan may be made to any firm, copartnership or corporation of which any member of such advisory board or body is a member, stockholder, director, officer, agent or other employee, or to any person, firm, copartnership, or corporation on the endorsement, surety, or guaranty of any

such member of such advisory board or body upon such conditions as are herein fixed for a loan, directly or indirectly, or a line of credit and the report thereof to any director of such bank. Loans herein authorized can be made only on authorization of or confirmation within thirty days after making such loan, by a majority of all the directors of such bank and the affirmative vote of all directors of such bank present at the meeting authorizing or confirming such loan. Such interested director shall not vote or participate in any manner in the action of the board on such loan; *provided*, that by and with the consent of the superintendent of banks previously obtained in writing, all directors may vote upon such a loan made by one bank to another bank where the entire capital stock of one is owned by or held in trust for the stockholders of the other bank and where all or a majority of the board of directors of each of said banks are composed of the same persons.

(b) *Credit to Directors.*—The board of directors of any such bank may fix the total amount of credit that may at any one time during the twelve months next succeeding be given to any director, agent, or other employee, other than an officer, or to any firm, copartnership, or corporation in which any director, agent, or other employee other than an officer is a member, stockholder, director, officer, agent or other employee, or to any corporation of which any officer of a commercial bank, proposing to fix such total amount of credit, is a minority stockholder, director, officer, agent or employee, and any or all loans made within or up to the total amount of such authorized credit may at any time during said twelve months be renewed from time to time, in whole or in part, by the officers of the bank without any further vote or action on the part of the board of directors. Each such authorization shall be entered upon the records or minutes of said bank. No director shall vote or participate in any manner in such action of the board fixing the total amount of credit that may at any one time be given to himself or to any firm,

copartnership or corporation in which he is a member, stockholder, director, officer, agent or other employee. The fact of making such loan, the names of the directors authorizing such loan, the name of the director, agent or employee, obtaining such loan, or the name of the firm, copartnership or corporation in which such director, agent or employee is interested, or the name of the corporation, of which any officer of a commercial bank is a minority stockholder, director, officer, agent or employee, obtaining such loan, the amount of such loan, the rate of interest thereon, the time when the loan will become due, the amount, character and value of security given therefor, if any, and the fact of final payment when made shall forthwith be reported in writing by the cashier or secretary of such bank to the superintendent of banks. In case a loan is made to a corporation there shall be reported in the same manner the name of each director and officer of such bank who is a member, stockholder, director, officer or employee of such borrowing corporation, and the amount of stock held by him in such borrowing corporation. All the provisions of this section relating to reports shall apply to the granting of credit and all loans made under any credit given and payment made thereon shall also be reported immediately after the same is made. In case of a loan made without the previous authorization of the directors, the fact of making such loan shall forthwith be reported and the action of the board of directors, in confirming or refusing to confirm such loan within thirty days thereafter, and the fact of final payment when made shall be reported in the same manner as herein required for loans made under previous authorization.

(c) *Penalty*.—Any officer, director, agent, or employee of a commercial bank, who knowingly procures a loan from such commercial bank contrary to the provisions of this section, shall be guilty of a felony. In case of the neglect or failure of the secretary or cashier of any such bank to report to the superintendent of banks, as herein provided, any of the facts so required to be



reported, or in case of the neglect or failure of the secretary or cashier of any such bank to report to the superintendent of banks any loan made contrary to the provisions of this section, the bank shall be liable therefor and shall forfeit to the people of the state of California twenty-five dollars per day for each day, or part thereof, during which such neglect or failure continues.

This section shall not apply to any loan made to a religious corporation, club, or other membership corporation of which one or more directors, officers, agents or employees of such commercial bank may be members or officers but in which they have no financial interest.

(d) *Loan to Corporation Owned or Controlled by Directors.*—No loan may be made to any corporation, a majority of the stock of which is owned or controlled by any one or more of the directors or officers of such commercial bank, except with the previous consent of the superintendent of banks.

(e) *Loans to Directors on Security.*—Loans may be made to any director, other than an officer, directly or indirectly; or to any agent or employee of a commercial bank, on the security of United States bonds, United States treasury certificates or interest-bearing notes or obligations of the United States, or those for which the faith and credit of the United States are pledged for repayment of principal or interest, or those issued under authority of the United States, notwithstanding anything in this section contained, and such loans may be made in the usual manner of making loans in which no director of such bank is interested.

Act of the Legislature, approved May 15, 1919,  
in effect July 22, 1919.

Section 1081.—**TRUST COMPANIES.**—Any corporation which has been or shall be incorporated under the laws of this state, which is authorized by its articles of incorporation to act as executor, administrator, guardian of estates, assignee, receiver, depository or trustee, under appoint-



ment of any court or by authority of any law of this state, or as trustee for any purpose permitted by law, which has its principal place of business in a city in which the population does not exceed one hundred thousand persons and which has a capital of not less than one hundred thousand dollars actually paid in, in cash, assigned to or available for the purpose of conducting business in any such capacity, or trust business of any character permitted by law, and which has made with the state treasurer the deposit of money or securities of the character and in the amount required by law, and which has received from the superintendent of banks the certificate of authority to transact such business, and any corporation which has been or shall be incorporated under the laws of this state, which is authorized by its articles of incorporation to act as executor, administrator, guardian of estates, assignee, receiver, depository or trustee, under appointment of any court or by authority of any law of this state, or as trustee for any purpose permitted by law, which has its principal place of business in a city in which the population exceeds one hundred thousand persons and which has a capital of at least two hundred thousand dollars actually paid in, in cash, assigned to or available for the purpose of conducting business in any such capacity, or trust business of any character permitted by law, and which has made with the state treasurer the deposit of money or securities of the character and in the amount required by law, and which has received from the superintendent of banks the certificate of authority to transact such business, may act, or may be appointed by any court to act, in any such capacity in like manner as an individual, and when so qualified shall be known as a trust company.

(a) *May Receive Deposits.*—Any such trust company may accept or receive any deposit of money or personal property authorized, directed or permitted to be made with any such corporation by any court or law of this state, and may accept and execute any trust provided for

in this act, or permitted by any law of this state, to be taken, accepted or executed by an individual.

(b) *Segregation of Capital and Surplus in Cities of Less Than 100,000.*—Any such trust company, if located in a city the population of which does not exceed one hundred thousand persons must segregate that portion of its capital and surplus assigned to or available for its trust business and must apportion and set aside at least fifty thousand dollars of such paid-up capital as security for the faithful performance and execution of all private trusts accepted by it, and must also apportion and set aside at least fifty thousand dollars of such paid-up capital as security for the faithful performance and execution of all court trusts accepted by it, and whenever such trust company shall be required to make the first additional deposit of securities with the state treasurer, such trust company must also apportion and set aside an additional fifty thousand dollars of paid-up capital as security for the faithful performance and execution of all private trusts accepted by it, and must also apportion and set aside an additional fifty thousand dollars of paid-up capital as security for the faithful performance and execution of all court trusts accepted by it.

(c) *In Cities of More Than 100,000.*—Any such trust company, if located in a city, the population of which exceeds one hundred thousand persons, must segregate that portion of its capital and surplus assigned to or available for its trust business and must apportion and set aside at least one hundred thousand dollars of such paid-up capital as security for the faithful performance and execution of all private trusts accepted by it, and must also apportion and set aside at least one hundred thousand dollars of such paid-up capital as security for the faithful performance and execution of all court trusts accepted by it; *provided*, that no such trust company shall at any time be required to apportion and set aside any portion of its surplus as security for the faithful performance and execution of such private trusts, nor shall

it be prohibited from so doing; *and provided, further*, that the respective amounts of capital or capital and surplus so apportioned and set aside shall be treated in all respects as the separate capital or capital and surplus of each respective kind or class of business, as though the same were conducted by separate and distinct corporations, and each shall be kept, held, used and disposed of wholly for the exclusive benefit, protection and security of the respective classes of trust business to which the same were respectively so apportioned and set aside.

(d) *Oath May Be Taken by Officer*.—In all cases in which it is required that an executor, administrator, guardian of estates, assignee, receiver, depository or trustee, shall qualify by taking and subscribing an oath, or in which an affidavit is required, it shall be a sufficient qualification by such corporation if such oath be taken and subscribed or such affidavit be made by the president, vice president, secretary, manager, trust officer, assistant trust officer or regularly employed attorney thereof, and such officer or employee shall be liable for the failure of such trust company to perform any of the duties required by law to be performed by an individual acting in like capacity and subject to like penalties; *provided*, any such appointment as guardian shall apply to the estate only, and not to the person.

(e) *Trust Company as Member of Federal Reserve Bank*.—Any trust company upon becoming a member of a federal reserve bank is authorized and empowered:

To continue to administer, execute, enjoy and exercise all court and private trusts as defined in the bank act, powers, rights, privileges, and other fiduciary relations, appointments and business it may have at the time of becoming such trust company member, and also to take, execute and administer all new court and private trusts as defined in said bank act, including the right to the appointment of all fiduciary capacities in which it may be named in wills theretofore and thereafter executed and probated, and other appointments, powers, privileges

and business, of every kind and nature, as may be then or thereafter permitted to, but subject to the same requirements and limitations as may be imposed upon any corporation under all of the provisions of the bank act.

To hold, administer, execute, and in all respects generally handle, manage and dispose of, without charge, restriction, limitation or impairment of any nature, all of its investments, rights, interests, titles to property, contractual, legal and other rights, obligations or liabilities, of every kind or nature, court and private trusts as defined in the bank act, and other powers which it may be then permitted to exercise by law.

(f) *Authority of Foreign Corporation as Trustee.*—A foreign corporation may be authorized to act in this state as trustee for the following purposes:

- (1) To deliver bonds, and receive payment therefor.
- (2) To deliver permanent bonds in exchange for temporary bonds of the same issue.
- (3) To deliver refunding bonds in exchange for those of a prior issue or issues.
- (4) To register bonds, or to exchange registered bonds for coupon bonds, or coupon bonds for registered bonds.
- (5) To pay interest on such bonds, and to take up and cancel coupons representing such interest payments.
- (6) To redeem and cancel bonds when called for redemption, or to pay and cancel bonds when due.
- (7) The certification of registered bonds for the purpose of exchanging registered bonds for coupon bonds.
- (8) To act as trustee under any mortgage, deed of trust, or other instrument securing notes or bonds issued by any corporation.

Act of the Legislature, approved May 15, 1919;  
in effect July 22, 1919.

Section 1082.—INSPECTION OF BANKS.—Every bank and the trust department of every title insurance company doing a trust business shall be subject to the inspec-



tion of the superintendent of banks. The superintendent of banks, or his examiners, shall visit and examine every bank at least once each fiscal year. On every such examination inquiries shall be made by him as to the condition and resources of the bank, the mode of conducting and managing its affairs, the action of its directors, the investment and disposition of its funds, the safety and prudence of its management, the security afforded to those by whom its engagements are held and whether the requirements of its articles of incorporation and the law have been complied with in the administration of its affairs, and as to such other matters as the superintendent may prescribe.

(a) *Extra Examinations.*—Whenever, in the judgment of the superintendent of banks, the condition of any bank renders it necessary or expedient to make an extra examination or to devote any extraordinary attention to its affairs the superintendent of banks shall have authority to make any and all necessary extra examinations and to devote any necessary extra attention to the conduct of its affairs; and such bank shall pay for all such extra services rendered by the superintendent of banks at a price to be fixed by the superintendent of banks, but not to exceed twenty dollars per day for the examination of the principal office of such bank and twenty dollars a day for the examination of each branch office of each bank. The superintendent of banks shall also have power to examine, or cause to be examined, every agency located in this state of any foreign bank or banking corporation, for the purpose of ascertaining whether it has complied with the laws of this state, and for such other purposes and as to such other matters as the superintendent may prescribe. The superintendent, chief deputy, and every such examiner shall have the power to administer an oath to any person whose testimony he may require on the examination of any bank, or on the examination of any agency of any foreign bank or banking corporation, and to compel appearance and attendance of any such person

for the purpose of any such examination. When a bank shall have been examined by any examiner, and he finds securities therein which are, in his judgment, of doubtful value, he shall report the same to the superintendent of banks, who thereupon shall be authorized to employ appraisers at the expense of such bank to appraise said securities, at a compensation to be fixed by the superintendent of banks. The superintendent of banks shall, whenever required to do so by any bank, provide an auditor to make an audit of the affairs of such bank. The compensation for making such audit shall be paid by the bank direct to the person making the audit. Nothing herein shall be deemed to authorize or require the superintendent of banks to inspect or supervise the private trust business or title insurance business of any corporation doing a trust business.

(b) *Three Reports Each Year.*—The superintendent of banks shall call for the reports at least three times each year. The “past day designated by the superintendent” of banks shall for at least three times be the day designated by the comptroller of currency of the United States for reports of national banking associations.

Act of the Legislature, approved May 15, 1919;  
in effect July 22, 1919.

Section 1083.—BRANCH BANKS.—No bank in this state, or any officer or director thereof, shall hereafter open or keep an office other than its principal place of business, without first having obtained the written approval of the superintendent of banks to the opening of such branch office, which written approval may be given or withheld in his discretion, and shall not be given by him until he has ascertained to his satisfaction that the public convenience and advantage will be promoted by the opening of such branch office; and, *provided further*, that no bank or any officer or director thereof, shall open or maintain such branch unless the capital of such bank, actually paid in cash, shall exceed the amount required by this act by the

sum of twenty-five thousand dollars for each branch office opened and maintained. Every bank, and every such officer or director violating the provisions of this section shall be guilty of a misdemeanor.

Act of the Legislature, approved March 1, 1909.

Section 1084.—MEETINGS OF BANK DIRECTORS.—The board of directors of a bank must hold a meeting at least once a month, in its banking premises.

Act of the Legislature, in effect August 8, 1915.

Section 1085.—OATH OF DIRECTORS.—Each director, when appointed or elected, shall take an oath that he will, so far as duty devolves on him, diligently and honestly administer the affairs of such bank, and will not knowingly violate or wilfully permit to be violated any of the provisions of law applicable to such bank, and that he is the owner in good faith and in his own right of the shares of stock of the actual market value required by this act, subscribed by him or standing in his name on the books of the bank, and that the same is not hypothecated or in any way pledged as security for any loan or debt; and, in case of re-election or re-appointment, that such stock was not hypothecated or in any way pledged as security for any loan or debt during his previous term. Such oath shall be subscribed by the director making it, and certified by the officer before whom it is taken; and shall be immediately transmitted to the superintendent of banks, and filed and preserved in his office.

Act of the Legislature, approved April 21, 1911.

Section 1086.—ADVERTISING BY BANK.—Every person, firm, company, copartnership or corporation advertising that he or it is transacting the business of a bank, savings bank, or trust company, or making use of any office sign at the place where such business is transacted, having thereon any artificial or corporate name, or, in other words, indicating that such place or office is the place or

office of a bank, or that deposits are received there or payments made on check, or that interest is paid on deposits, or that certificates of deposit, either with or without interest, are being issued, or that any other form of banking business is transacted, and every person, firm, company, copartnership or corporation making use of or circulating any letter-heads, bill-heads, blank notes, blank receipts, certificates or circulars, or any written or printed, or partly written and partly printed, paper, whatever, having thereon any artificial or corporate name, or advertising that such business is the business of a bank, savings bank or trust company, must have the proper capital stock paid in and set aside for the purpose of transacting such business, as provided for in this act. And every person, firm, company, co-partnership or corporation doing any of the things or transacting any of the business defined in this section, must transact such business according to the provisions of the bank act.

Nothing in this section contained shall prohibit building and loan associations from receiving deposits of money and executing certificates therefor in accordance with the laws governing such associations, but all such certificates other than certificates of stock must designate on the face thereof the terms under which such certificates are issued.

Any violation of this law is a misdemeanor.

Act of the Legislature, approved April 21, 1911.

No bank, or any officer thereof, shall advertise in any manner, or publish any statement of the capital authorized or subscribed, unless it or he advertise and publish, in connection therewith, the amount of capital actually paid up. Any bank, or any officer thereof, advertising in any manner, or publishing any statement of such capital, authorized or subscribed, without a statement in connection therewith of the capital actually paid up, shall be guilty of a misdemeanor.

Act of the Legislature, approved March 1, 1909.



Section 1087.—REPORTS ON DEAD PERSONS.—The president or managing officer of every bank must, within fifteen days after the first day of January of every odd numbered year, return to the superintendent of banks, a sworn statement showing the names of depositors known to be dead, or who have not made further deposits, or withdrawn any moneys during the preceding ten years. Such statements shall show the amount of the account, the depositor's last known place of residence or postoffice address, and the fact of death, if known to such president or managing officer. Such president or managing officer must give notice of these deposits in one or more newspapers published in or nearest to the town or city where such bank has its principal place of business, at least once a week for four consecutive weeks, the cost of such publication to be paid pro rata out of such unclaimed deposits. This section does not apply to any deposit made by or in the name of a person known to the president or managing officer to be living, or which, with the accumulation thereon, is less than fifty dollars. The superintendent of banks must incorporate in his subsequent report such returns made to him as provided in this section. Any president or managing officer of any bank who neglects or refuses to make the sworn statement required by this section shall be guilty of a misdemeanor.

Act of the Legislature, approved March 1, 1909.

Section 1088.—DEPOSITS OF MARRIED WOMEN OR MINORS.—When any deposit with a bank shall be made by or in the name of any married woman or minor, the same shall be held for the exclusive right and benefit of such depositor, and free from the control or lien of all other persons, except creditors, and shall be paid, together with the dividends, if any, and interest, if any, thereon to the person in whose name deposits shall have been made, and the receipt or acquittance of such minor shall be a valid and sufficient release and discharge for such deposit, or any part thereof, to the bank. When

any deposit with a bank shall be made by any person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to such bank, in the event of the death of the trustee, the same or any part thereof, together with the dividends or interest, if any, thereon, may be paid to the person for whom the deposit was made. When a deposit with a bank shall be made by any person in the names of such depositor and another person or persons, and in form to be paid to either or the survivor or survivors of them, such deposit thereupon, and any additions thereto made by either of such persons upon the making thereof, shall become the property of such persons as joint tenants, and the same, together with all interest thereon, shall be held for the exclusive use of the persons so named, and may be paid to either during the lifetime of all or any or to the survivor or survivors after the death of one or more of them, and such payments and the receipt or acquittance of the one to whom such payment is made shall be valid and sufficient release and discharge to said bank for all payments made on account of such deposit.

(a) *Deposits of Dead Persons.*—The surviving husband or wife of any deceased person, or, if no husband or wife is living, then the children of said decedent, or, if no children are living, then the father or mother of such decedent, and if neither the father or mother is living, then the brothers and sisters of such decedent, may, without procuring letters of administration, collect of any bank any sum which said deceased may have left on deposit in such bank at the time of his or her death; provided, such deposit shall not exceed the sum of one thousand dollars. Any bank, upon receiving an affidavit stating that said depositor is dead, and that affiant is the surviving husband or wife, as the case may be, or stating that decedent left no husband or wife, and that affiant is, or affiants are, the children, or stating that decedent left neither husband, wife or children, and that

affiant is the father or mother, as the case may be, of said decedent, or stating that the decedent left neither husband, wife, children, father or mother, and that affiants are brothers and sisters, as the case may be, and that the whole amount that decedent left on deposit in any and all banks of deposit in this state, does not exceed the sum of one thousand dollars, may pay to said affiant or affiants, any deposit of said decedent, if the same does not exceed the sum of one thousand dollars, and the receipt of such affiant is sufficient acquittance therefor.

Act of the Legislature, in effect August 8, 1915.

Section 1089.—LIST OF STOCKHOLDERS.—Every bank now in existence or hereafter organized shall keep in its offices, in a place accessible to the stockholders, depositors, and creditors thereof, and for their use, a book containing a list of stockholders in such corporation, and the number of shares of stock held by each; and every such bank shall keep posted in its office, in a conspicuous place, accessible to the public generally, a notice signed by the president or secretary, showing:

1. The names of the directors of such bank.
2. The number and par value of the shares of stock held by each director.

The entries on such book and such notice shall be made and posted within twenty-four hours after any transfer of stock, and shall be prima facie evidence against each director and stockholder of the number of shares of stock held by each.

Act of the Legislature, approved March 1, 1909.

Section 1090.—PARTNERSHIP LIST.—Every copartnership doing a banking business shall keep in its office, in a place accessible to the partners and depositors and the creditors thereof, a list of the partners and the capital paid into the co-partnership of each partner.

Act of the Legislature, approved March 1, 1909.

Section 1091.—DEPARTMENTAL BANKING.—Any corporation authorized by its articles of incorporation so to do, may combine the business of a commercial bank, savings bank and trust company, or any or all of them.

Act of the Legislature, approved March 1, 1909.

Section 1092.—UNINCORPORATED BANKERS.—Every person or number of persons, not being incorporated, engaged in the business of banking or publicly receiving money on deposit, must conduct such business under a name which shows the true name of all persons engaged therein, unless such person or persons are doing business as a special partnership.

Act of the Legislature, approved March 1, 1909.

Section 1093.—DIVIDENDS.—The directors of banks having a capital stock may, at such time and in such manner as the by-laws prescribe, declare and pay dividends to depositors and stockholders of so much of the profits of the bank, and of the interest arising from the capital and deposits, as may be appropriated for that purpose under the by-laws or under their agreements with depositors, but every such bank shall, before the declaration of such dividend, carry at least one-tenth ( $1/10$ ) part of the net profits of the stockholders for the preceding half-year to its surplus or reserve fund until the same shall amount to twenty-five per centum of its paid-up capital stock. But the whole or any part of such surplus or reserve fund, if held as the exclusive property of stockholders, may at any time be converted into paid-up capital stock, in which event such surplus or reserve fund shall be restored in manner as above provided until it amounts to twenty-five per centum of the aggregate paid-up capital stock. A larger surplus or reserve fund may be created, and nothing herein contained shall be construed as prohibitory thereof. The capital and the assets of the bank are a security to depositors and stockholders, depositors having the priority of the security over the



Section 1091, page 840, "Business Law for Business Men"—MERGER OF TWO OR MORE BANKS—The respective boards of directors of such banks may by a majority vote of all of the members of each board, at a meeting duly called and held, make or authorize to be made between such banks a written agreement in duplicate for the merger of such banks. Such agreement shall specify each bank to be merged and the bank which is to receive into itself the merging bank or banks, and it shall prescribe the terms and conditions of the merger and the mode of carrying it into effect.

Act of the Legislature of California, approved June 3, 1921; in effect August 3, 1921.



stockholders, but the by-laws may provide that the same security shall extend to deposits made by stockholders.

Act of the Legislature, approved March 1, 1909.

Section 1094.—CHANGE TO CAPITAL STOCK.—Every corporation heretofore created under the laws of this state, doing a banking business therein, and which has no capital stock, may elect to have a capital stock, and may issue certificates of stock therefor; provided, that no such corporation shall use or convert any moneys or funds theretofore belonging to it, or under its control, into capital stock; but such funds or moneys must be held and managed only for the purposes and in the manner for which they were created. Before such change is made, a majority of the members of such corporation present at a meeting called for the purpose of considering the proposition whether it is best to have a capital stock, its amount, and the number of shares into which it shall be divided, must vote in favor of having a capital stock, fix the amount thereof, and the number of shares into which it shall be divided. Notice of the time and place of holding such meeting, and its object, must be given by the president of such corporation by mailing notice of such meeting to each member of such corporation at his last known postoffice address at least ten days prior to the day fixed for such meeting, and by publication in some newspaper printed and published in the county, or city and county, in which the principal place of business of the corporation is situated, at least once a week for three successive weeks prior to the holding of such meeting. A copy of the proceedings of this meeting, giving the number of persons present, the votes taken, the notice calling the meeting, the proof of its publication, the amount of capital actually subscribed, and by whom, all duly certified by the president and secretary of the corporation, must be filed in the office of the secretary of state and clerk of the county where the articles of incorporation are filed. Thereafter such corporation is possessed of all the rights

and powers, and is subject to all the obligations, restrictions, and limitations, as if it had been originally created with a capital stock.

Act of the Legislature, approved March 1, 1909.

Section 1095.—SAFE DEPOSIT DEPARTMENT.—Any bank may conduct a safe deposit department, but shall not invest more than one-tenth of its capital and surplus in such safe deposit department.

Act of the Legislature, approved March 1, 1909.

Section 1096.—SALE OF ASSETS.—Any bank may sell the whole or any portion of its assets to any other bank which may purchase its assets after obtaining the consent of the stockholders of the selling and of the purchasing bank holding of record at least two-thirds of the issued capital stock of each of such corporations; such consent to be expressed either in writing executed and acknowledged by such stockholders and attached to the instrument of sale, or to a copy thereof, or by vote at a stockholders' meeting of such banks called for that purpose.

The selling and purchasing banks may for such purposes enter into an agreement of sale and purchase, which agreement shall contain all the terms and conditions connected with the sale and purchase of its assets.

Such agreement shall contain proper provision for the payment of liabilities of the selling bank, and in this particular shall be subject to the approval of the superintendent of banks; and shall not be valid until such approval is obtained. Such agreement may contain provisions for the transfer of all deposits to the purchasing bank, subject, however, to the right of every depositor of the selling bank to withdraw his deposit in full on demand after such transfer, irrespective of the terms under which it was deposited with the selling bank.

Act of the Legislature, approved March 1, 1909.



Section 1097.—PURCHASE OF ITS OWN CAPITAL STOCK. No bank shall purchase or invest its capital or money of its depositors, or any part of either, in the shares of its own capital stock; nor loan its capital or the money of its depositors, or any part of either, on the shares of its own capital stock, unless such purchase or loan shall be necessary to prevent loss on debts previously contracted in good faith.

Stock thus purchased or carried shall, within six months from the time of its purchase, be sold or disposed of at public or private sale.

The officers of any bank who knowingly violate or consent to the violation of this provision shall be guilty of a felony.

Act of the Legislature, approved March 1, 1909.

Section 1098.—UNLAWFULLY ADVERTISING AS SAVINGS BANK.—It shall not be lawful for any commercial bank, individual banker, trust company, association, firm, stock company or corporation, to advertise or put forth a sign as a savings bank, either directly or indirectly, or in any way to solicit or receive deposits as a savings bank, or in any way which might lead the public to believe that such deposits are received or invested under the same conditions or in the same manner as deposits in savings banks, except in the case of savings banks or banks having a savings department, subject to the provisions of this act.

Act of the Legislature, approved April 21, 1911.

Section 1099.—DUTY AS TO CERTIFIED CHECKS.—Whenever a check drawn on any bank is certified by any officer or employee of such bank, the amount thereof shall be immediately charged against the account of the person, firm or corporation drawing the same.

It shall be unlawful for any officer or employee of any bank to certify any check drawn upon such bank unless the person, firm or corporation drawing the check has on deposit with the bank at the time such check is certified,

an amount of money subject to the payment of such check, equal to the amount specified in such check.

Any officer or employee of any bank who shall wilfully violate the provisions of this section, or shall resort to any device, or receive any fictitious obligations, directly or indirectly, in order to evade the provisions hereof, or who shall certify checks before the amount thereof shall have been regularly entered to the credit of the drawer, shall be guilty of a felony.

Act of the Legislature, approved April 21, 1911.

Section 1100.—EXAMINATION OF NATIONAL BANKS.—Any national bank of this state receiving the deposits of banks organized and conducting business under this act, must, at the request of the superintendent of banks, submit to an examination by him, or his duly appointed examiners, should the superintendent of banks in his discretion deem it necessary or desirable that such examination be made; and the expense of such examination shall be paid by such national bank; and if any such national bank shall refuse to permit such examination to be made by the superintendent of banks, then the superintendent of banks shall notify in writing any and all banks depositing its funds with such national bank, to withdraw its deposits therefrom, and such bank shall comply with such order, and failure so to do shall be a misdemeanor.

Act of the Legislature, approved March 1, 1909.

Section 1101.—POSTING OF CERTIFICATE.—Every bank shall post in a conspicuous place in its banking-room the last certificate obtained from the superintendent of banks. Every bank that fails to comply with the provisions of this section is guilty of a misdemeanor.

Act of the Legislature, approved March 1, 1909.

Section 1102.—DEPOSITS BY ORDER OF COURT.—Any court having appointed and having jurisdiction of any executor, administrator, guardian, assignee, receiver,

depository or trustee, upon the application of such executor, administrator, guardian, assignee, receiver, depository or trustee, or upon the application of any person having an interest in the estate administered upon by such officer or trustee, after notice to other parties in interest as the court may direct, and after a hearing upon such application, may authorize such officer or trustee to deposit any money then in his hands as such officer or trustee or which may thereafter come into his hands, and until the further order of the court, in any bank organized under the laws of the State of California; and upon such deposit being made, the officer or trustee so depositing the same shall thereafter and while such moneys remain on deposit in such bank, be relieved and discharged from all liability or responsibility therefor, and the bond required of such officer or trustee given upon his appointment shall be thereupon by said court reduced to such an amount as the court may deem reasonable; such deposit shall be repaid only upon the orders of said court, and shall be a preferred claim against such bank and be paid in full before any other depositor of such bank shall have been paid.

Section 1103.—ESTATE MONEYS.—Where a decedent, at the time of his or her death, left moneys on deposit with a savings bank, it shall be lawful for any public administrator, who shall become the administrator of the estate, to allow such deposit to remain in said savings bank, and also, it shall be lawful for him to deposit therein to the account of said decedent, any and all moneys of said estate not required for the current expenses of administration. Such deposit, whether made by the decedent or a public administrator, shall relieve the public administrator from depositing the same with the county treasurer. Moneys so deposited, whether by the decedent or by a public administrator, may be drawn upon demand without notice, upon the order of said administrator, countersigned by a judge of a superior

court when required for the purpose of administration or otherwise.

Act of the Legislature, approved April 21, 1911.

Section 1104.—CERTIFICATES OF DEPOSIT AND TIME CERTIFICATES.—Savings banks may issue general certificates of deposit, which are transferable, as in other cases, by indorsement and delivery; may issue, when requested by the depositor, special certificates, acknowledging the deposit by the person therein named of a specified sum of money, and expressly providing on the face of such certificate that the sum so deposited and therein named may be transferred only on the books of the bank; payment thereafter made by the bank to the depositor named in such certificate, or to his assignee named upon the books of the bank, or in case of death, to the legal representative of such person, of the sum for which such special certificate was issued, shall discharge the bank from all further liability on account of the money so paid.

All time certificates of deposit issued by a savings bank shall be subject to the same limitations and conditions as applied to other deposits, and notice thereof shall be given by the words "Subject to conditions of agreement with depositors" printed on the face of the certificate issued.

Act of the Legislature, approved March 1, 1909.

(a) *Conditions of Payment to Depositors.*—Savings banks may prescribe by their by-laws, or by contract with depositors, the time and conditions on which repayment is to be made to depositors, except as in this act otherwise prohibited; but whenever there is any call by depositors for repayment of a greater amount than the bank may have disposable for that purpose, the directors or officers thereof must not make any new loans or investments of the funds of the depositors, or of earnings thereof, until such excess of call has ceased. The directors of any such bank, having no capital stock, must retain, on each



dividend-day, at least ten per centum of the net profits of the bank, to constitute a reserve fund, which must be invested in the same manner as other funds of the bank, and must be used toward paying any losses which the bank may sustain in pursuing its lawful business. The bank may provide by its by-laws for the disposal of any excess in the reserve fund, as provided for in this act, and the final disposal, upon the dissolution of the bank, of the reserve fund, or of the remainder thereof, after payment of losses.

Act of the Legislature, approved March 1, 1909.

Section 1105.—USE OF WORD “TRUST.”—The use of the word “trust” in combination with or in connection with the word “company,” “corporation,” “incorporation,” “association,” “society,” “organization,” or “syndicate,” is hereby prohibited to all persons, firms, associations, companies or corporations other than corporations provided for by this act. Every person, firm, association, company or corporation which uses the word “trust” in combination with or in connection with the word “company,” “corporation,” “incorporation,” “association,” “society,” “organization,” or “syndicate,” as the name under which business is done or transacted, shall be subject to the provisions of this act and to the supervision of the superintendent of banks. Any person, firm, association, company, or corporation making use of the word “trust” in combination or in connection with the word “company,” “corporation,” “incorporation,” “association,” “society,” “organization,” or “syndicate,” in the manner hereinabove mentioned, in the transaction of business, and not subject to the provisions of this act and the supervision of the superintendent of banks, shall be guilty of a misdemeanor.

No corporation hereafter formed shall use the word “trust” or “trustee” as a part of its corporate name unless it shall be authorized by its articles of incorporation to act as executor, administrator, guardian, as-

signee, receiver, depository or trustee; nor shall any corporation hereafter formed accept or execute any trust mentioned in this act, unless it shall have complied with the provisions of this act.

Act of the Legislature, approved March 1, 1909.

Section 1106.—IMPAIRMENT OF CAPITAL.—Whenever the superintendent of banks shall have reason to believe that the capital of any bank is reduced by impairment or otherwise below the amount required by law or by its articles of incorporation, he shall require such bank to make good the deficiency within sixty days after the date of such requisition. He shall examine or cause to be examined any such bank to ascertain the amount of such impairment or reduction of capital and whether the deficiency has been made good as required by him.

Act of the Legislature, approved April 21, 1911.

Section 1107.—BANK REPORTS.—Every bank doing a departmental business shall render to the superintendent of banks for each department conducted by it, a separate report showing in detail the actual financial condition of such department, and shall at the time of furnishing said report separately publish the statement for each department as provided in this act.

Every bank doing business in this state shall, whenever required by the superintendent of banks, make a report in writing to him, verified by the oath of its president and its secretary or cashier, or two principal officers. Such reports shall show the actual financial condition of the bank making the report, at the close of any past day specified by the superintendent, and shall specify the following:

1. The amount of its capital stock and the number of shares into which it is divided, or, if not incorporated, the amount of capital actually paid in, and by whom.

2. The names of the directors and the number of shares of stock held by each, or, if not incorporated, the

names of each member of the firm and the amount of capital paid in by each.

3. The total amount of capital actually paid up in money, and the total amount of contingent and other reserve funds, if any.

4. The total amount due the depositors.

5. The total amount and character of any other liabilities it may have.

6. The amount at which the lot and building occupied by the bank for the transaction of its regular business stands debited on its books, together with the market value of all other real estate held, whether acquired in settlement of loans or otherwise; the amount at which it stands debited on the bank books, in what county situated, and in what name the title is vested, if not in the name of the bank itself.

7. The amount loaned on real estate, specifying the amount secured on real estate in each county separately; also specifying the name of the person in whose name the property is held in trust or as security, in case it is held in any name other than that of the bank and the instrument creating the security does not itself disclose the name of the bank.

8. The amount invested in bonds, designating the name and amount of each particular kind.

9. The amount loaned on stocks and bonds, designating each particular class and the amount thereof.

10. The amount of money loaned on other securities, with a particular designation of each class and the amount loaned on each.

11. The actual amount of money on hand or deposited in any other bank or place, with the name of the place where deposited and the amount in each place.

12. Any other property held, or any amount of money loaned, deposited, invested or placed, not otherwise herein enumerated, and the place where situate and the value of said property, and the amount so loaned,

deposited or placed, and any other information he may request relative to the conduct and affairs of such bank.

The oaths of the officers and the statements above required shall state that they and each of them have a personal knowledge of the matters therein contained, and that they believe every allegation, statement, matter, and thing therein contained is true. Any wilful false statement in the premises shall be perjury and shall be punished as such.

The superintendent of banks shall call for reports specified by the previous section, at least three times, each year, and shall call for such reports as near as possible upon the same days as those designated by the comptroller of the currency of the United States for reports of national banking associations.

Act of the Legislature, approved March 1, 1909.

(a) *Publication of Statement.*—At the time of furnishing such report to the superintendent of banks, every bank shall also publish a condensed statement of its financial condition, at least once, in some newspaper of general circulation, published in the city or town where its principal place of business is located, and, if no paper is published in such town, then in some newspaper of general circulation in the county where its principal place of business is located. Such published statement shall show the total amount of loans, the total amount of overdrafts, the total amount invested in bonds and other securities, the total amount due from banks, the total amount of checks and other cash items, the total amount of cash on hand, capital paid in, surplus funds; undivided profits, less expenses and taxes paid; due to other banks and bankers, due to trust companies and savings banks; individual deposits subject to checks; demand certificates of deposit; time deposits; certified checks; cashier's checks outstanding; and such other items as will show the actual financial condition of the bank making the report.

Act of the Legislature, approved March 1, 1909.



**Section 1108.—CONDUCT OF BUSINESS IN UNSAFE MANNER.**—If it shall appear to the superintendent of banks that any bank has violated its articles of incorporation, or any law binding upon it, he must, by an order under his hand and official seal, which seal must be adopted by him, addressed to such bank, direct the discontinuance of such violation; or, if it shall appear to the superintendent of banks that such bank is conducting business in an unsafe or injurious manner, he must in like manner direct the discontinuance of such unsafe or injurious practices. Such order shall require such bank to show cause, before the superintendent of banks, at a time and place to be fixed by him, why said order should not be observed. If upon such hearing it shall appear to the superintendent of banks that such bank is conducting business in an unsafe or injurious manner, or is violating its articles of incorporation, or any law of this state, then the superintendent of banks shall make such order of discontinuance final, and such bank shall immediately discontinue all practices named in such order by the superintendent of banks. Such bank shall have ten days after any such order is made final in which suit may be commenced to restrain enforcement of such order, and unless such action be so commenced and enforcement of said order be enjoined within ten days, by the court in which such suit is brought, then such bank shall comply with such order; and, in the event of its failure so to do, then the superintendent of banks shall have power to take immediate charge and control of said bank, and liquidate its affairs in the manner provided in this act for the liquidation of banks.

Act of the Legislature, approved March 1, 1909.

**Section 1109.—WHEN SUPERINTENDENT MAY TAKE POSSESSION OF BANK.**—Whenever the superintendent of banks shall have reason to conclude that any bank is in an unsound or unsafe condition to transact the business for which it is organized, or that it is unsafe or inexpedient

for it to continue business, the superintendent of banks may forthwith take possession of the property and business of such bank, and retain such possession until such bank shall resume business, or its affairs be finally liquidated, as herein provided.

On taking possession of the property and business of any such bank, the superintendent of banks shall forthwith give notice in writing of such fact to any and all corporations and individuals holding or in possession of any of the assets of such bank.

No bank, corporation or individual, knowing of such taking possession by the superintendent of banks, or notified as aforesaid, shall have a lien or charge for any payment, advance or clearance thereafter made, or liability thereafter incurred against any of the assets of the bank of whose property and business the superintendent of banks shall have taken possession as aforesaid. Such bank may, with the consent of the superintendent of banks, resume business upon such conditions as may be approved by him.

Upon taking possession of the property and business of such bank, the superintendent of banks is authorized to collect moneys due to such bank, and to do such other acts as are necessary to conserve its assets and business, and shall proceed to liquidate the affairs thereof as hereinafter provided.

The superintendent of banks shall collect all debts due and claims belonging to it, and upon the order of the superior court may sell or compound all bad or doubtful debts, and on like order may sell all real and personal property of such bank on such terms as the court shall direct; and may, if necessary to pay the debts of such bank, enforce individual liability of the stockholders by action to be brought within three years after the date of his taking possession of the affairs of such bank.

The superintendent of banks may, under his hand and official seal, appoint one or more special deputy super-

intendents of banks, as agent or agents, to assist him in the duty of liquidation and distribution, the certificate of appointment to be filed in the office of the superintendent of banks, and a certified copy in the office of the clerk of the county in which the principal office of such bank is located.

The superintendent of banks may, from time to time, authorize a special deputy superintendent to perform such duties connected with such liquidations and distribution as the superintendent of banks may deem proper. The superintendent of banks may employ such counsel, and procure such expert assistance and advice as may be necessary in the liquidation and distribution of the assets of such bank, and may retain such officers or employees of such bank as he may deem necessary. The superintendent of banks shall require, from a special deputy superintendent and from such assistants, such security for the faithful discharge of their duties as he may deem proper.

The superintendent of banks shall cause notice to be given by advertisement in such newspapers as he may direct, weekly, for three consecutive months, calling on all persons who may have claims against such bank, to present the same to the superintendent of banks, and make legal proof thereof, at a place and within a time not more than six months after the last day of publication, to be therein specified.

The superintendent of banks shall mail a copy of such notice to all persons whose names appear as creditors upon the books of the bank. If the superintendent of banks doubts the justice and validity of any claim, he may reject the same and serve notice of such rejection upon the claimant, either by mail or personally. An affidavit of the service of such notice shall be prima facie evidence thereof, and shall be filed with the superintendent of banks. An action upon a claim so rejected must be brought within six months after such service. Claims presented after the expiration of the time fixed in

the notice to creditors shall be entitled to share ratably in the distribution to the extent of the assets in the hands of the superintendent of banks, equitably applicable thereto.

Upon taking possession of the property and assets of such bank, the superintendent of banks shall make an inventory of the assets of such bank in duplicate, one to be filed in the office of the superintendent of banks, and one in the office of the clerk of the county in which the principal office of such bank is located; upon the expiration of the time fixed for the presentation of claims, the superintendent of banks shall make in duplicate a full and complete list of the claims presented, including and specifying such claims as have been rejected by him, one to be filed in the office of the superintendent of banks, and one in the office of the clerk of the county in which the principal office of such bank is located; such inventory and list of claims shall be open at all reasonable times for inspection.

The compensation of the special deputy superintendents, counsel, and other officers and assistants, and all expenses of supervision and liquidation, shall be fixed by the superintendent of banks on notice to such bank, and shall upon his certificate be paid out of the funds of such bank in his hands.

The sums collected by the superintendent of banks shall, from time to time, be deposited in one or more banks in this state, subject to examination by the superintendent of banks.

At any time after the expiration of the date fixed for the presentation of claims, the superintendent of banks may, out of the funds remaining in his hands after the payment of expenses, declare one or more dividends, and after the expiration of one year from the date of first publication of notice to creditors he may declare a final dividend.

Objection to any claim not rejected by the superintendent of banks may be made by any party interested,



by filing a copy of such objection with the superintendent of banks, who shall present the same to the superior court of the county in which such bank has its principal place of business, with a petition that said court pass upon the validity of such claims; and such court shall thereupon, upon such notice to the party presenting the same, and to the superintendent of banks, as the court may deem proper, accept or reject said claim, and the superintendent of banks shall observe the order of the court in that regard; *provided, however*, that should the claim be rejected, such rejection shall not conclude the claimant from bringing an action upon such claim within six months after such rejection.

Upon the petition of the superintendent of banks, such court may make proper provisions for unclaimed deposits.

Whenever any such bank, of whose property and business the superintendent of banks has taken possession as aforesaid, deems itself aggrieved thereby, it may at any time within ten days after such taking possession, and not thereafter, apply to the superior court in the county in which the principal office of such bank is located, to enjoin further proceedings; and said court, after citing the superintendent of banks to show cause why further proceedings should not be enjoined, and upon hearing the allegations and proofs of the parties, and determining the facts, may, upon the merits, dismiss such application, or enjoin the superintendent of banks from further proceedings, and direct him to surrender such business and property to such bank.

Either party aggrieved by the judgment rendered thereon may appeal therefrom to the supreme court, as in other cases of appeal thereto from the judgment of a superior court.

An appeal as above provided shall operate as a stay of the judgment of the superior court, and no bond need be given if the appeal be taken by the superintendent of banks; but if the appeal be taken by such bank, a bond

shall be given, as required by section nine hundred and forty-three of the Code of Civil Procedure.

Whenever the superintendent of banks shall have paid to each and every depositor and creditor of such corporation (not including stockholders) whose claim or claims as such creditor or depositor shall have been duly approved and allowed, the full amount of such claim, and shall have made proper provisions for unclaimed and unpaid deposits or dividends, and shall have paid all expenses of the liquidation, the superintendent of banks shall call a meeting of the stockholders of such corporation by giving notice thereof for thirty days, in one or more newspapers published in the county where the principal office of such corporation is located. At such meeting, the superintendent of banks shall appear and deliver to the stockholders all the property, effects and records of such bank, and upon such transfer and delivery he shall be discharged from any and all further liability to such bank and its creditors. And thereupon the bank shall be in the same position as though it had never been authorized to transact a banking business, and such bank, by fulfilling the requirements of this act, and of the superintendent of banks, can thereafter be authorized to resume the conduct of its business as a bank.

Act of the Legislature, approved March 1, 1909.

Section 1110.—FAILURE TO MAKE REPORTS.—If any bank shall fail to make the report required by law or by the superintendent of banks, within ten days from the day designated for the making thereof, or to include therein any matter required by law or by the superintendent of banks, every such delinquent bank shall forfeit to the people of the state the sum of one hundred dollars for each day that such report shall be delayed or withheld, and for every day it shall fail to report any such omitted matter. In the event of the failure of any such bank to make the report required from it by law, or by the superintendent of banks, he shall immediately cause

the books, papers and affairs of such bank to be thoroughly examined.

Section 1111.—REPORT OF DIRECTORS.—It shall be the duty of the board of directors of every bank to examine fully into the books, papers and affairs of the bank of which they are directors, and particularly into the loans and discounts thereof, with a special view to ascertaining the value and security thereof, and of the collateral security, if any given, in connection therewith, and into such other matters as the superintendent of banks may require; such examination to be made at least once a year, but no such subsequent yearly examinations shall be made within three months of the next preceding examination. Such directors shall have power to employ such assistance in making such examination as they may deem necessary. Within ten days after the completion of such examination, a report in writing thereof, sworn to by the directors making the same, shall be made by the board of directors of such bank, and placed on file with the records of said bank, and shall be subject to examination by the superintendent of banks.

Such report shall particularly contain a statement of the assets and liabilities of the bank examined, as shown by its books, together with any deductions from the assets, or additions to liabilities, which such directors or committee, after such examination, may determine to make. It shall also contain a statement, in detail, of loans, if any, which in their opinion are worthless or doubtful, together with their reasons for so regarding them; also a statement of loans made on collateral security, which in their opinion are insufficiently secured, giving in each case the amount of the loan, the name and market value of the collateral, if it has any market value, and, if not, a statement of that fact, and its actual value as nearly as possible. Such report shall also contain a statement of overdrafts, of the names and amounts of such as they consider worthless or doubtful, and a full

statement of such other matters as affect the solvency and soundness of the bank. If the directors of such bank shall fail to make, or cause to be made, and file such report of examination in the manner and within the time specified, the directors of such bank shall be guilty of a misdemeanor.

Act of the Legislature, approved March 1, 1909.

Section 1112.—**PAR VALUE OF CAPITAL STOCK.**—The capital stock of any bank having a capital stock, shall have a par value of at least one hundred dollars and the paid up value shall be endorsed on the face of each certificate issued, which paid up value shall be the same on all certificates issued.

Act of the Legislature, approved April 21, 1911.

Section 1113.—**LIEN OF BANK.**—A bank has a general lien, dependent on possession, upon all property in its hands belonging to a customer, for the balance due the bank from such customer in the course of their business together.

Civil Code, Section 3053.

Section 1114.—**DEPOSIT OF STATE MONEY.**—All moneys under the control of the state treasurer, belonging to the state, may be deposited by the state treasurer to the credit of the state in such state or national bank, or banks, in the state as the treasurer, with the approval of the governor and state controller, shall select for the safe-keeping of such deposits, and any sum so deposited shall be deemed to be in the state treasury; provided that the bank or banks in which such money is deposited shall furnish security as hereinafter provided; and provided further, that such depository bank or banks be selected from those agreeing to pay the highest rate of interest, not less than two per cent per annum, for such deposits, as may be determined by bids to be submitted at such times and in such manner as the treasurer, with the ap-



proval of the governor and the state controller, shall direct; provided, that not more than one-tenth of the aggregate amount of state moneys available for deposit and on deposit shall be deposited in any one bank; and provided, further, that such deposit shall not exceed fifty per cent of the paid-up capital, exclusive of reserve and surplus, of any depositary bank. Any and all bids may be rejected by the treasurer, with the approval of the governor and state controller, and new bids asked for. The expense of transportation of moneys to and from the state treasury to such depositaries shall be borne by such depositaries. Said deposits, with interest thereon, shall be subject to withdrawal at any time upon the demand of the state treasurer, unless the treasurer, with the consent of the governor and controller, shall deposit any part of such moneys upon different terms; provided that no agreement for the deposit of said money shall be for a longer period than one year.

For the security of the funds deposited by the state treasurer under the provisions of this act, there shall be deposited with the treasurer bonds of the United States, or of this state, or of any county, municipality or school district within this state, which bonds shall be approved by the governor, controller and treasurer, to an amount in value at least ten per cent in excess of the amount of the deposit with such bank or banks; and if, in any case, or at any time, such bonds are not deemed satisfactory security to the governor, controller and treasurer, they may require such additional security as may be satisfactory to them. Said bonds, or any part thereof, may be withdrawn on the written consent of the governor, controller and treasurer, provided that a sufficient amount of said bonds to secure said deposits shall always be kept in the treasury; and in the event that said bank or banks of deposit shall fail to pay such deposits or any part thereof on the demand of the state treasurer, then it shall be the duty of the state treasurer to forthwith convert

said bonds into money and to disburse the same according to law.

At the time of depositing state moneys in any bank, designated as a depository, the state treasurer shall take and preserve a receipt therefor, stating the amount deposited and referring to the contract made between the depository banks and the treasurer. The moneys so deposited may be drawn out by the check or order of the state treasurer.

Act of the Legislature, approved March 24, 1911.

Section 1115.—DEPOSIT OF COUNTY OR CITY MONEY.—County or city moneys may be deposited in banks by the public officer having the legal custody of such funds. When such funds are so deposited, the bank must furnish as security bonds of the United States, or bonds of California, or bonds of any county, municipality, or school district within this state, which must be approved by the officer making the deposit and the district attorney of a county or city attorney of a city. The market value of the bonds furnished as security must be at least ten per cent in excess of the amount of the deposit; provided, the amount of the deposit cannot in any case exceed the face value of the bonds. The bank receiving such deposit must pay a reasonable amount of interest, which must not be less than two per cent per annum on the daily balances deposited. The rate of interest must be fixed annually in the month of January, in the case of counties by the treasurer, auditor and chairman of the board of supervisors, or in the case of cities by the treasurer, auditor (or clerk in cities having no auditor), and chairman of the council or other governing body of the municipality. Interest on deposits must be paid quarterly. Deposits are subject to withdrawal at any time on demand. The bank may also return deposits at any time. The total amount deposited in any bank cannot at any one time exceed fifty per cent of its capital stock. No officer can have on deposit at any one time more than ten per cent of the public moneys

under his control, and available for deposit, in any bank, while there are other qualified banks requesting deposits. Money must be deposited in banks within the county or city, and no officer can be required to deposit money in outside banks.

Act of the Legislature, approved March 23, 1907.

Section 1116.—NATIONAL BANK CANNOT DEAL IN STOCKS.—A national bank has no power to deal in stocks of another corporation; and it cannot purchase or subscribe for the stock of another corporation. As incidental to the power to loan money on personal security, however, a national bank may, in the usual course of doing such business, accept stock of another corporation as collateral; and by the enforcement of its rights as pledgee it may become the owner of the collateral; but it cannot, in the ordinary course of business, buy or sell stocks of another corporation. (Decided by the Supreme Court in the case of Chemical National Bank vs. Havermale, which decision is printed in Volume 120 of the California Reports, page 53.)

Section 1117.—TAKING OF STOCK IN SATISFACTION OF PLEDGE.—While a bank organized under the act of congress as a national bank is not given the power to deal in stocks or bonds, such bank may take title to stocks or bonds in compromise of a disputed or doubtful claim, or take them in pledge, or purchase them with a view to protecting or satisfying a claim secured by such pledge.

Where a national bank buys stock pledged to it, it should dispose of such stock as soon as a sale can, to proper advantage, be made. (Decided by the Supreme Court of California, in the case of McBoyle vs. Union National Bank, which decision is printed in Volume 42, California Decisions, page 499.)

Section 1118.—WHEN SUIT TO RECOVER MONEY FROM BANK MAY BE BROUGHT.—To actions brought to recover

money or other property deposited with any bank, banker, trust company, building and loan association or savings and loan society, there is no limitation.

Act of the Legislature of California, 1915; in effect August 8, 1915.

Section 1119.—BANK DIRECTORS.—No person shall be eligible for election as director of a bank having a capital stock unless he is a stockholder of the bank, owning, in his own right, shares thereof of the par value of at least five hundred dollars; and every person elected to be director who, after such election, shall cease to be the owner in his own right of the amount of such stock aforesaid, or shall hypothecate or in any way pledge such stock as security for any loan or debt, shall immediately notify the superintendent of banks in writing of such sale or hypothecation and such director may be removed from the office of director by the superintendent of banks; provided, however, that any executor or executrix, administrator or administratrix holding shares of a bank of the par value of five hundred dollars, in his or her representative capacity, shall be eligible for election as a director thereof. If a bank be organized without capital stock, no person shall be eligible as a director thereof unless he is both a member and a depositor of such bank.

Act of the Legislature of California, 1915; in effect August 8, 1915.

Section 1120.—UNCLAIMED DEPOSITS.—All amounts of money heretofore or hereafter deposited with any bank to the credit of depositors who have not made a deposit on said account or withdrawn any part thereof or the interest and which shall have remained unclaimed for more than twenty years after the date of such deposit, or withdrawal of any part of principal or interest, and where neither the depositor or any claimant has filed any notice with such bank showing his or her present residence, shall, with the increase and proceeds thereof, be deposited



with the state treasurer after judgment. The president or managing officer of every bank must, within fifteen days after the first day of January of every year, return to the superintendent of banks and to the state controller a sworn statement showing the names of depositors known to be dead, or who have not made further deposits, or withdrawn any moneys during the preceding twenty years.

Act of the Legislature of California, 1915; in effect August 8, 1915.

Section 1121.—BANK CHECK—INTENT TO DEFRAUD.—Every person, who for himself or as the agent or representative of another or as an officer of a corporation, wilfully, with intent to defraud, makes or draws or utters or delivers to another person any check or draft on a bank, banker or depositary for the payment of money, knowing at the time of such making, drawing, uttering or delivery, that he or his principal or the corporation of which he is an officer has not sufficient funds in, or credit with such bank, banker or depositary, to meet such check or draft in full upon its presentation, is punishable by imprisonment in the county jail for not more than one year or in the state prison for not more than fourteen years. The word "credit" as used herein shall be construed to be an arrangement or understanding with the bank or depositary for the payment of such check or draft.

Act of the Legislature, approved May 2, 1919; in effect July 22, 1919.

A. J. BLEDSOE, ATTORNEY-AT-LAW, Los Angeles, California,—General practice in all the courts. Office advice. Written opinions by mail. See title page of this book for office address of A. J. Bledsoe.

## PART XI.

### MINES AND MINING

Section 1122.—UNITED STATES LAWS.—The laws of the United States govern the subject of mines and mining, and provide the manner in which locations shall be made, how a mining claim can be held, and the particular lands upon which a mining location may be placed. The laws of the United States also direct and control the rights and liabilities of miners in relation to each other. The laws of the United States are paramount on all these matters.

Section 1123.—STATE LAWS.—While, as has been said, the laws of the United States are paramount, yet the State of California has power, through its Legislature, to pass mining laws, providing for the health and safety of those engaged in mining, or employed in and about mining works; and to pass mining laws regulating locations, and other matters, provided such laws are not in conflict with the laws of the United States.

Section 1124.—LOCAL RULES AND CUSTOMS.—The miners of any mining district in the State may adopt local rules and establish local customs in relation to the acquisition, holding, and working of claims within such district; and such rules and customs, when proved, have the force of law, provided they do not conflict with the laws of the United States or of the State of California. These local rules and customs usually deal with the posting and recording of location notices, and sometimes regulate the size of a claim, and the number of claims which

any person may locate, in the district; and while they cannot extend or enlarge the rights conferred by the laws of the United States or of the State, they can and frequently do restrict them.

Section 1125.—WHO MAY LOCATE A MINING CLAIM.—Only those who are citizens of the United States, or who have declared their intention to become such, are allowed by the law to make a location of mineral lands in California.

Revised Statutes of the United States, Section 2319.

Act of the Legislature, approved March 13, 1909.

Section 1126.—UPON WHAT LAND MINING CLAIM MAY BE LOCATED.—Only unoccupied, unclaimed public mineral lands are locatable as a mining claim. The land must be public land, that is, it must be land the title to which is in the United States, and which is open to entry. Therefore, if it is land which has been expressly reserved by law, or if it is occupied as an Indian Reservation, it is not open to entry as mineral land. It must be unoccupied and unclaimed; that is, it cannot be located upon if there is already a claimant in good faith occupying the land. But this does not mean every occupancy of any character, a mere possession without right. The occupation and claim to the land, in order to be a bar to location by another, must be in good faith and in compliance with the law of the United States. And, lastly, it must be mineral land. The test of the character of the land is, whether it is more valuable for minerals than for agricultural purposes. If the land contains mineral in its natural state, it is mineral land, and may be located upon as a mining claim.

Section 1127.—VALUABLE MINERAL DEPOSIT.—In order to constitute a valuable mineral deposit within the meaning of the federal laws, there must be minerals in such

quantity as to justify the expenditure of effort to extract them. It is not necessary, however, that mineral of sufficient amount and value to allow immediate profitable working be shown to exist in the land, a present or prospective commercial value being enough. (Decided by the Supreme Court of California, in the case of *Madison vs. Octave Oil Company*, which decision is printed in Volume 37, *California Decisions*, page 29.)

Section 1128.—WHAT IS MINING.—Mining is defined to be digging and searching for precious and economic metals and minerals, whether by shafts, pits, and tunnels, or by placer or hydraulic gravel mining; and the term includes the mining of coal, iron, phosphate, and hydrocarbons, and the boring for oil and gas, as well as prospecting for any of those metals or minerals.

Section 1129.—WHAT CONSTITUTES A VALID LOCATION. To constitute a valid location of a mining claim, three things are always essential. There must be, first, discovery of the mineral; second, posting and recording of notice; third, marking the location on the ground so that the boundaries can be readily traced.

In all legislation, whether of congress or of the state or territory, and by all mining regulations and rules, discovery and appropriation are recognized as the source of title to mining claims, and development by working as the condition of continued ownership until a patent is obtained.

(a) *Appropriation*.—"Appropriation" is ordinarily effected by first posting the notice of location at or near the point where the ledge is exposed, then recording the notice, and thereafter marking the boundaries.

(b) *Performance of Essential Acts*.—When every act necessary to complete a location has been done before an adverse claim has accrued, the order in which such acts have been performed is immaterial.



(c) *Marking of Boundaries Main Act.*—The marking of the location upon the ground so that the boundaries may be readily traced, is the main act of original location.

(d) *Posting of Notice.*—There is nothing in the statute requiring the posting of the notice on the day of discovery, or prescribing where it shall be posted on the claim or at all.

(e) *Completion of Location.*—The discovery is the source of title and vests the discoverer with the prior right to complete his location, which he can only lose by a failure within a reasonable time to mark his location so that the boundaries can be traced upon the ground.

(f) *Prior Posting Unnecessary to Prior Discovery.*—Prior discovery is not required to be accompanied by a prior posting of notice in order to vest the claimant with the prior right to complete his location.

The mining law of the United States does not require the notice of location to be posted or recorded.

(Decided by the Court of Appeals of California, in the case of McCleary vs. W. D. Broaddus, which decision is printed in Volume 11 of California Appellate Decisions, page 146.)

Section 1130.—THE DISCOVERY.—If it is a lode claim, there must be an actual discovery of mineral. If a person should attempt to take a lode claim on land which he had not prospected, and knew nothing about, it would not be a valid location. Good faith is required by the law. And no location of a claim can be made until the discovery of the vein or lode within the limits of the claim located. To discover a quartz claim, means the actual finding of mineral-bearing rock in place, the discovery of mineral-bearing ore within the crevices of the rock, or incased within defined boundaries; or, the discovery of such indications of the presence of ore within rock in place, as an experienced miner would feel justified in spending his time and money upon with the reasonable expectation of finding ore in paying quantities. When a locator finds

rock in place containing mineral, he has made a discovery within the meaning of the law, whether the earth or rock is rich or poor, whether it assays high or low. It is the finding of the mineral in the rock in place, as distinguished from float rock, that constitutes the discovery, and warrants the prospector in making a location of a mining claim. The claimant should, therefore, prior to locating his claim, unless the vein can be traced upon the surface, sink a shaft or run a tunnel or drift to a sufficient depth to discover and develop a mineral-bearing vein, lode, or crevice. He should also determine, if possible, the general course of the vein in either direction from the point of discovery, by which direction he will be governed in making the boundaries of his claim on the surface. What has been said on the subject of discovery applies only to lode or quartz claims. The law does not specify any actual discovery of mineral as an essential to the location of a placer claim, and it has been held in California that a location of a placer claim may be made without discovery of minerals being first made on the ground. But no patent could be obtained for a placer claim without proof of the mineral character of the claim.

Section 1131.—MARKING THE BOUNDARIES.—The boundaries must be marked in such a way that the claim can be identified on the ground. The locator should drive a post or erect a monument of stones at each corner of his surface ground; and at the point of discovery, or discovery shaft, he should fix a post, stake, or board, on which should be designated the name of the lode, the name or names of the locators, and the number of feet claimed and in which direction from the point of discovery.

Section 1132.—LOCATION NOTICE.—A notice of location must be posted on the claim, at the point of discovery, or discovery shaft.

Section 1133.—FORM OF NOTICE OF LOCATION OF LODE CLAIM.—The following is a form of location of lode claim:—

### LOCATION NOTICE

NOTICE IS HEREBY GIVEN TO ALL WHOM IT MAY CONCERN: That....., a citizen of the United States, having discovered a lode or vein of quartz, or rock in place, bearing..... (here insert kind of mineral discovered), within the limits of the claim hereby located, has this day, under and in accordance with the Revised Statutes of the United States, Chapter VII, Title 32, located..... (here state number of feet) linear feet of this vein or lode, with surface ground..... (here state number of feet) feet in width, situated in..... mining district, County of....., State of California, and known as..... (here state name of mine), extending..... feet to a..... (here describe natural object or monument), and..... feet to..... (here describe natural object or monument) from this notice at the discovery or prospect shaft, the exterior boundaries of this claim being distinctly marked by reference to some natural object or permanent monument, and more particularly described as follows, to-wit: .....

(Here insert description.)

..... and I intend to hold and work said claim as provided by the local customs and local rules of miners, and the mining Statutes of the United States.

Dated on the ground, the..... day of....., 19.....  
 Discovered....., 19.....  
 ....., locator.  
 Recorded....., 19.....

Section 1134.—FORM OF NOTICE OF LOCATION OF A PLACER CLAIM.—The following is a form of notice of location of a placer claim:—

### LOCATION NOTICE

NOTICE IS HEREBY GIVEN TO ALL WHOM IT MAY CONCERN: That....., a citizen of the United States, has this day located, in accordance with the Revised Statutes of the United States, Chapter VI, Title 32, the following described placer mining ground, to-wit: .....

(Description: If on surveyed land, describe the legal subdivision. If on unsurveyed land, describe as accurately as possible by courses and distances.)

Situated in.....mining district, County of....., State of California. This claim shall be known as.....(here insert name of claim) mining claim, and I intend to work the same in accordance with the local customs and rules of miners, and the mining Statutes of the United States.

Dated on the ground the.....day of....., 19.....

Located....., 19.....

Recorded....., 19.....

Section 1135.—RECORDING OF LOCATION NOTICE.—The Congress of the United States has provided by law that “the location notice must be filed for record in all respects as required by the State laws and local rules and regulations, if there be any.” The State of California, by an Act of the Legislature, has provided that notices of location of mining claims must be recorded in the Recorder’s office of the county where the mining claim is situated, within thirty days after the posting of



notice of location. This applies to lode, placer, and tunnel claims.

Civil Code of California, Section 1159.

Act of the Legislature, approved March 13, 1909.

Section 1136.—SIZE OF LODGE CLAIM.—Any person who is a citizen of the United States, or who has declared his intention to become a citizen, may locate, record, and hold a mining claim of fifteen hundred linear feet along the course of any mineral vein or lode subject to location; or an association of persons, who are citizens of the United States, may make a joint location of fifteen hundred feet along the course of the lode or vein. The claim, according to the law, is not to exceed fifteen hundred feet in length. As to width, the law provides that the lateral extent of location on veins or lodes shall in no case exceed three hundred feet on each side of the middle of the vein at the surface. Thus the extreme size of a lode claim is fifteen hundred feet in length by six hundred feet in width. But the law also gives mining districts the right to reduce the width of a mining claim to less than six hundred feet, but not less than fifty feet. The laws referred to are the laws of the United States. The State of California has no law of its own upon the subject. When the locator does not determine by survey or exploration where the middle of his vein at the surface is, his discovery shaft is taken to mark the middle of the vein.

Where the vein runs in one direction, the location must follow the direction of the vein, and the locator cannot stake his claim crosswise of the vein and expect to hold the full amount allowed by law as the size of a lode claim. Where the vein within a mining claim ran in a northerly and southerly direction, and the location was crosswise of the vein, it was held by the Court of Appeals that the side-lines were really end-lines, considering the direction of the lode on the surface; and that the rights of the locators must be confined to the

area within the side-lines three hundred feet on each side of the vein or lode. (Decided by the California Court of Appeals, in the case of Southern California Ry. Co. vs. O'Donnell, which decision is printed in Volume 85 of the Pacific Reporter (advance sheets), page 932.)

Revised Statutes of the United States, Section 2320.

Section 1137.—SIZE OF PLACER CLAIM.—An individual may locate twenty acres as a placer claim. Two persons may associate themselves together and locate forty acres as a placer claim; and so on up to eight persons, who may locate one hundred and sixty acres as a placer claim. But no individual can locate more than twenty acres, and no association of persons can locate more than one hundred and sixty acres.

Revised Statutes of the United States, Sections 2330, 2331.

Section 1138.—DISCOVERY ON PLACER GROUND.—It has already been stated that there must be a valid discovery of minerals, before the location can have any legal effect, and that the discovery of a quartz claim must be of a lode or vein in rock in place. But when we come to consider a placer claim, the rule stated does not apply. The term "placer" is of wide significance. It includes any form of mineral deposit, except quartz or other rock in place. All forms of mineral and metal bearing earth, other than veins or lodes in rock in place, are held to be "placer." They cannot be fixed in place, confined within walls of rock, for they may be found in shifting sand, or loose gravel, or in the channels of rivers; and the term "placer" includes natural gas, petroleum, and hydrocarbons. But while a valid location may be made under the laws relating to placer locations without a previous discovery of mineral, yet such discovery must be made before a patent from the United States Gov-

ernment can be issued under the Acts of Congress relating to the disposition of mineral lands. (Decided by the Supreme Court of California in the case of Gregory vs. Pershbaker, which decision is printed in Volume 73 of the California Reports, page 109.)

Section 1139.—DISCOVERY OF OIL.—A discovery of oil within the limits of the claim is essential to the validity of an oil location. To constitute a discovery of oil, there must be something more than ordinary surface indications, such as the seepage of oil, or geological formations. There must be an actual discovery of oil in paying quantities. It is not necessary that this discovery be made before or at the time of the location, for a subsequent discovery will operate to perfect the location. But if the location is made before discovery of oil in paying quantities, and the locator leaves the claim, without prosecuting work on it, another person may lawfully enter and locate on the land. (Decided by the Supreme Court of California, in the case of New England and Coalinga Oil Co. vs. Congdon, which decision is printed in Volume 34 of California Decisions, page 395.)

Section 1140.—HOMESTEADER AND OIL LOCATOR.—A claimant to government land under a homestead entry acquires a valid title thereto as against prior locators under an oil placer mining location, where such locators were not in the possession of the land at the time of such entry, nor engaged in the diligent prosecution of the work toward a discovery, but had merely made improvements thereon in excess of the required amount of assessment work.

The rule that actual possession of a mining claim held under a mining location is unnecessary for the protection of the title thereto, is applicable only when the location is valid and complete.

The principle that discovery and appropriation are the source of title of mining claims, and assessment or

development work is the condition of their continued possession, applies only when the location is valid and complete.

A location is valid and complete only when, after compliance with other requirements, a discovery of valuable mineral in place has been made.

In case of oil locations the locator is permitted to mark the boundaries of his location and post and record his notice after discovery and, while diligently prosecuting his work to a discovery, is entitled to protection in his possession undisturbed by any form of hostile or clandestine entry.

(Decided by the Supreme Court of California, in the case of *McLemare vs. Express Oil Company*, which decision is printed in Volume 40 of the *California Decisions*, page 371.)

Section 1141.—TIME WITHIN WHICH LOCATION MUST BE MADE AFTER DISCOVERY.—The law of the United States does not specify any certain time within which location must be made, and notices posted or recorded, after discovery. The location must be made, and the boundaries marked on the ground, within a reasonable time after discovery. If local rules and customs prescribe a certain time, that time must be followed. Whenever any patent to mineral lands shall contain a statement of the date of location of a claim or claims, upon which such patent is based, this statement will be received in the courts of California as *prima facie* evidence of the true date of the location. (Act of the Legislature, approved March 7, 1905.)

Section 1142.—OIL AND ASPHALTUM.—Petroleum, natural gas, and asphaltum are held to be mineral, and may be located as placer claims. Much controversy over the question, whether public land in which petroleum was found could be located under the mining laws, caused the Congress of the United States to pass an act on the sub-



ject in 1897, which removes all doubt. The law reads: "Any person authorized to enter lands under the mining laws of the United States may enter or obtain patent to lands containing petroleum or other mineral oil, and chiefly valuable therefor, under the provisions of the laws relating to placer and mineral claims." Therefore, twenty acres of oil lands may be located as a placer claim by an individual, and as much as one hundred and sixty acres by an association of persons. It is not necessary that discovery of oil should be first made.

Act of Congress, approved February 11, 1897.

Section 1143.—TRANSFER OF RIGHTS BY MEMBERS OF ASSOCIATION.—The rights acquired by an association of locators of mineral lands may be transferred among themselves before discovery, without affecting the whole claim, and the subsequent discovery by any grantee will perfect the entire original location.

Where an association of eight persons locate one hundred and sixty acres of mineral land for the purpose of discovering oil, and before discovery transfer a specific portion to a stranger, such portion becomes a separate and independent claim, unless there be an agreement to the contrary; and a subsequent discovery of oil on such several portion will not perfect the entire original location. (Decided by the Supreme Court of California, in the case of Merced Oil Mining Company vs. R. L. Patterson, which decision is printed in California Decisions, Volume 35, page 550.)

Section 1144.—ANNUAL LABOR AND ASSESSMENT WORK. In order to hold a mining claim, the locator must do a certain amount of work each year, and this is measured not by time, but by the value of the work performed. On each claim located, whether quartz or placer, not less than one hundred dollars' worth of labor must be done, or an equal value of improvements made, during each year until a patent has been issued for the claim.

A failure to comply with this law forfeits the claim, and leaves it open for relocation by another person. But if the original locator, his heirs, assigns, or legal representatives, after the time has expired within which he should have done the assessment work, and before another person has located on the ground, then proceeds to do the work, he saves the forfeiture and recovers the claim again to himself.

Revised Statutes of the United States, Section 2324.

Section 1145.—WHEN FIRST WORK MUST BE DONE.—The law does not mean that the work should be done within a year from the date of location. The period for performing the assessment work commences on the first day of January succeeding the date of location of the claim. At least one hundred dollars worth of work must be done each year.

Supplement to the Revised Statutes of the United States, Volume 1, page 276.

Section 1146.—WHERE WORK SHOULD BE DONE.—Annual labor or improvements to the amount of one hundred dollars may be anywhere within the boundaries of the claim. But it is not absolutely necessary that this work be done within such boundaries. It may be done on adjoining or neighboring ground, if the work so done tends to develop the claim, and this will be sufficient compliance with the law.

And in a case where a miner holds several claims, the annual labor or improvements required for the whole of them may be done or made upon any one or more of them, provided that such labor or improvements tend to develop them all. And even if the claim upon which the work is done is patented, and the remainder are unpatented, it will make no difference, so long as the work done tends in fact to develop, and is done for the purpose of develop-

ing the unpatented claims, and as assessment work upon them.

Work done or improvements made, for the purpose of developing the ground embraced in the location, outside of the limits of the claim, is as available for holding it as if done within its boundaries. Labor and improvements, within the meaning of the law, are deemed to have been had on a mining claim, whether it consists of one location or several, when the labor is performed or the improvements are made for its development, to facilitate the extraction of the metals it may contain; and such labor and improvements may lawfully be on ground which originally constituted only one of the locations, as in sinking a shaft; or the labor and improvements may be at a distance from the claim itself, as where the labor is performed for the turning of a stream, or to bring water on the claim, or where the improvement consists in the construction of a flume to carry off the debris or waste material. (Decided by the Supreme Court of California in the case of *De Noon vs. Morrison*, which decision is printed in Volume 83 of the *California Reports*, page 163.)

Section 1147.—PROOF OF ASSESSMENT WORK.—The law of California provides that proof of assessment work must be made by affidavit, within thirty days after the time limited for performing the labor or making the improvements, particularly describing the labor performed and improvements made, and the value thereof. The law also provides that this affidavit must be recorded in the office of the County Recorder of the county in which the mine or claim is situated, within thirty days.

Statutes of 1891, page 219.

Act of the Legislature, approved March 13, 1909.

(a) *Recording Fees*.—For recording the affidavit herein required, the county recorder shall receive a fee

of ten cents per folio, twenty cents for endorsement and ten cents for indexing the name of each claim and each owner.

Act of the Legislature of California, 1915; in effect August 8, 1915.

Section 1148.—FORM OF PROOF OF ASSESSMENT WORK.  
The following is a form of proof of assessment work:

### PROOF OF LABOR

STATE OF CALIFORNIA, }  
COUNTY OF..... } ss.

Before me the subscriber personally appeared....., who being duly sworn says, that at least \$100 worth of labor or improvements were performed or made upon.....(here state name of mining claim), situated in.....mining district, County of....., State of California, during the year ending December 31, 19..... Such expenditure was made by or at the expense of....., owner of said claim, for the purpose of holding said claim.

That the labor performed and improvements made were as follows, to-wit: .....

(Here give a particular description of the labor performed and improvements made.)

That the value of said labor was \$.....

That the value of said improvements was \$.....

Subscribed and sworn to before me this.....day of....., 19.....

Notary Public in and for the County of.....,  
State of California.

Section 1149.—RELOCATION OF CLAIM AFTER FORFEITURE.—If for any reason a mining claim has been for-



feited, by failure to do assessment work, or by reason of abandonment, another person may relocate it. He must make his location as the original locator did, and in his notice of location he should state that the claim was originally located by another person (naming him), but that the claim had been abandoned or forfeited.

**Section 1150.—MINERAL ENTRIES WITHIN FOREST RESERVES.**—The law provides that “any mineral lands in any forest reservation which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to such location and entry,” notwithstanding the reservation. This makes mineral lands in the forest reserves subject to location and entry under the general mining laws in the usual manner.

**Section 1151.—LOCATION BY AGENTS.**—A location of a mining claim may be made in the name of another than the actual locator, and when so made, the person in whose name it is made becomes vested with the legal title to the claim. A prospector may locate for himself, and then make other locations in the names of others, and he will be considered the agent of the persons in whose names the locations are made. (Decided by the Supreme Court of California in the case of *Moore vs. Hamerslag*, which decision is printed in Volume 109 of the California Reports, page 122.)

**Section 1152.—LOCATION BY MINORS.**—A valid location of a mining claim may be made by a minor. The law allows any one who is a citizen, or who has declared his intention to become such, to locate a mining claim. The law does not require that the locator shall be of any particular age. In a California case the Supreme Court held that a minor can make a location of a mining claim in this State, saying: “Nor is there any reason in the

nature of things why a minor may not make a valid location. After the preliminary steps are taken, all that is required is that a certain amount of work shall be done. If the minor cannot do it, he can get any one to do it for him, and the condition imposed by the statute is fulfilled. If he cannot, the claim lapses, and is open to relocation by others. It may be added that so far as we know it is the practice of many mining communities for minors to locate claims." (Decided by the Supreme Court of California in the case of Thompson vs. Spray, which decision is printed in Volume 72 of the California Reports, page 528.)

Section 1153.—TUNNEL CLAIMS.—The laws of the United States provide for certain tunnel claims, where a tunnel is run for the discovery of "blind lodes or veins;" and so long as the tunnel claimant operates his tunnel, the law reserves in his favor 3,000 feet from the face of the tunnel, with 1,500 feet in the opposite direction on the strike of the vein, from either wall of his tunnel. The law states that the owner of the tunnel shall have the right of possession of all veins or lodes within 3,000 feet from the face of such tunnel, on the line thereof, not previously known to exist, discovered in the tunnel, to the same extent as if discovered upon the surface. Locations on the line of such tunnel, of veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel, and while it is being prosecuted with reasonable diligence, are invalid. Failure to prosecute the work on the tunnel for six months is considered an abandonment of the right to all veins on the line not discovered when the work ceased.

Revised Statutes of the United States, Section 2323.

Section 1154.—LOCATION OF TUNNEL CLAIM.—The term "face," as used in the tunnel claim law, means the first working face formed in the tunnel, and signifies the

point at which the tunnel actually enters cover, it being from this point that the 3,000 feet are to be counted upon which prospecting is prohibited. To avail themselves of the benefits of this provision of law, the proprietors of a mining tunnel will be required, at the time they enter cover, to give proper notice of their tunnel location by erecting a substantial post, board, or monument at the face or point of commencement thereof, upon which should be posted a good and sufficient notice, giving the names of the parties or company claiming the tunnel right; the actual or proposed course or direction of the tunnel; the height and width thereof, and the course and distance from such face or point of commencement to some permanent, well known objects in the vicinity; and at the time of posting such notice they should, in order that miners or prospectors may be enabled to determine whether or not they are within the lines of the tunnel, establish the boundary lines thereof, by stakes or monuments placed along such lines at intervals of not more than 600 feet, to the terminus of the 3,000 feet from the face or point of commencement of the tunnel, and the lines so marked will define and govern as to the specific boundaries within which prospecting for lodes not previously known to exist is prohibited while work on the tunnel is being prosecuted with reasonable diligence. A copy of the posted notice must be filed with the County Recorder, and should also be filed with the Recorder of the mining district, if any; with an affidavit attached of the owners, claimants, or projectors of the tunnel, stating the amount expended by themselves and their predecessors in interest in prosecuting the work; the extent of the work performed; and that it is their intention in good faith to prosecute the work on the tunnel with reasonable diligence for the development of a vein or lode, or for the discovery of mines.

Section 1155.—LODE AND PLACER CLAIMS IN THE SAME GROUND.—It sometimes occurs that a lode will be discov-

ered within the boundaries of a placer claim. In that event, the owners of the placer claim have an immediate right to apply to the government for a patent, and the application must state the existence of the lode. The government will then issue a patent for the lode, fifty feet in width, upon the payment of \$5.00 per acre; and also a patent for the placer portion of the land upon the payment of \$2.50 per acre. If the owner of a placer claim makes application for a patent, without mentioning a known vein or lode within its boundaries, any other person may locate the lode, in the same manner as any other quartz claim is located, but acquiring only 1,500 by 50 feet.

Revised Statutes of the United States, Sec. 2333.

Section 1156.—DISCOVERY OF VEIN PASSING THROUGH PLACER CLAIM.—If a discovery is made on a vein passing through a placer claim, and at a point just outside the boundary of the placer claim, the discoverer of the lode may make a location which will include such portion of the placer claim as is required to secure a full lode claim of the dimensions customary in that mining district; and he may then mine the vein underneath the surface of the placer.

Section 1157.—MILL SITES.—The owner of a lode claim may also locate, in the same manner as mining claims are located (that is, by posting and recording notice, and erecting monuments for identification), five acres of non-mineral land for a mill site. The mill site need not be adjacent to the mining claim. It must be used for a mill site in connection with the mining claim, where a mill site is located by the owner of a lode claim. But the law further provides that the owner of a quartz-mill or reduction-works, not owning a mine in connection therewith, may also locate a mill site, not exceeding five acres of non-mineral land, and obtain a patent for it.

Revised Statutes of the United States, Sec. 2337.



Section 1158.—TIMBER FOR MINING PURPOSES.—The law allows sufficient timber to be cut on mineral land for the proper working of the mine proper. Timber for the mine, shafts, or tunnels, for houses for employees, and other purposes in the working of the mine, may lawfully be cut and used.

Section 1159.—MINING PARTNERSHIPS.—For the law as to mining partnerships, see under the heading “Partnership.”

Section 1160.—LIENS ON MINING CLAIMS.—For the law as to liens on mining claims, see under the heading, “Mechanics Liens.”

Section 1161.—ENTRY OF COAL LANDS.—Coal lands may be entered without making the location required for other claims. There is a difference, also, in the persons qualified to take coal lands, and in the number of acres which can be taken. The person who takes coal land must not only be a citizen of the United States, or have declared his intention to become such, but he must also be over the age of 21 years. Within sixty days after the date of actual possession and the commencement of improvements on the land, an individual may enter at the Land Office in the district any quantity of vacant coal lands not exceeding 160 acres. An association of persons may enter not exceeding 320 acres. The price to be paid for coal lands is \$20 per acre, for lands within fifteen miles of a completed railroad, or \$10 per acre for lands more than fifteen miles from a completed railroad.

Revised Statutes of the United States, Section 2348.

Section 1162.—HOW TO OBTAIN A PATENT TO A MINING CLAIM.—The Revised Statutes of the United States, Section 2335, provide the manner in which a patent to a mining claim may be obtained. It will be seen from what follows that the claim-owner who desires a patent must go to a lawyer, to have his application made out, and the various plats and notices properly filed and published; and as he cannot safely use any of the necessary forms himself, without the aid of a competent lawyer, the forms are not given in this book. The claimant who wants a patent is required, in the first place, to have a correct survey of his claim made, under authority of the United States Surveyor-General for California; such survey to show with accuracy the exterior surface boundaries of the claim, which boundaries are required to be distinctly marked by monuments on the ground. Section 2335 of the United States Revised Statutes is as follows: "A patent for any land claim and located for valuable deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim under this chapter, having claimed and located a piece of land for such purposes, who has, or have complied with the terms of this chapter, may file in the proper land office an application for a patent, under oath, showing such compliance, together with a plat and field notes of the claim or claims in common, made by or under the direction of the United States Surveyor-General, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted, and shall file a copy of the notice in such land office, and shall thereupon be entitled to a patent for the land, in the manner following: The register of the land office, upon the filing of such application, plat,

field notes, notices, and affidavits, shall publish a notice that such application has been made, for the period of sixty days, in a newspaper to be by him designated as published nearest to such claim; and he shall also post such notice in his office for the same period. The claimant at the time of filing this application, or at any time thereafter, within sixty days of publication, shall file with the register a certificate of the United States Surveyor-General that five hundred dollars' worth of labor has been expended or improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description, to be incorporated in the patent. At the expiration of the sixty days of publication, the claimant shall file his affidavit, showing that the plat and notice have been posted in a conspicuous place on the claim during such period of publication. If no adverse claim shall have been filed with the register and the receiver of the proper land office at the expiration of the sixty days of publication, it shall be assumed that the applicant is entitled to a patent, upon the payment to the proper officer of five dollars per acre, and that no adverse claim exists."

Revised Statutes of the United States, Section 2335.

Section 1163.—MINING LEASE.—A mining lease is necessarily different in many respects from the ordinary lease, for it must provide for amount and character of work to be done, timbering, the use of machinery, inspection of work and mine, the payment of royalty, and possibly other matters, which never enter into leases of other property.

A mining lease must be in writing, if the term is for more than one year.

Section 1164.—FORM OF MINING LEASE.—The following is a form of mining lease:

THIS INDENTURE, made this.....day of  
 ....., in the year of our Lord one thousand nine  
 hundred and....., between.....  
 ....., lessor, and ....., lessee or  
 tenant, Witnesseth, That the said lessor for and in con-  
 sideration of the rents, royalties, covenants, and agree-  
 ments hereinafter reserved, and by the said lessee to be  
 paid, kept, and performed, has granted, remised, and  
 let, and by these presents does grant, remise, and let unto  
 the said lessee, all the following described mine and min-  
 ing property, situated in.....mining district,  
 County of....., State of California, to-wit:

(Description of property.)

Together with the appurtenances....., to  
 have and to hold unto the said lessee or tenant for the  
 term of.....years from the date hereof, expiring  
 at noon on the.....day of.....,  
 19....., unless sooner forfeited or determined through  
 the violation of any covenant hereinafter against the  
 said tenant.....reserved.

And in consideration of the said demise, the said  
 lessee does covenant and agree with said lessor as fol-  
 lows, to-wit:

To enter upon said mine or premises and work the  
 same mine fashion, in manner necessary to good and  
 economical mining, so as to take out the greatest amount  
 of ore possible, with due regard to the safety, develop-  
 ment, and preservation of the said premises as a work-  
 able mine.

To work and mine said premises as aforesaid stead-  
 ily and continuously from the date of this lease; and  
 that any failure to work said premises with at least.....  
 .....persons employed for the space of  
 .....consecutive days may be considered a  
 violation of this covenant.

To well and sufficiently timber said mine at all points  
 where proper, in accordance with good mining; and to



repair all old timbering wherever it may become necessary.

To allow said lessor and his agents to enter upon and into all parts of said mine for the purpose of inspection, with use of all passages, ropes, windlass, ladder-ways, and all other means of ingress and egress for such purpose.

To not assign this lease, or any interest thereunder, and to not sublet the said premises or any part thereof, without the written assent of said lessor, and to not allow any person or persons except the said lessee and his workmen to take or hold possession of said premises or any part thereof under any pretense whatever.

To occupy and hold all cross or parallel lodes, dips, spurs, feeders, crevices, or mineral deposits of any kind, which may be discovered in working under this lease, or in any tunnel run to intersect said.....lode, or by the said lessee or any person or persons under him in any manner at any point within.....feet of the center line of said lode, as the property of said lessor; with privilege to said lessee of working the same as an appurtenance of said demised premises, during the term of this lease; and to not locate or record the same, or allow the same to be located or recorded, except in the name of said lessor.

To keep at all times the drifts, shafts, tunnels, and other passages and workings of said demised premises thoroughly drained and clear of loose rock and rubbish of all kinds.

To pay and deliver to said lessor as royalty.....of all ore to be extracted from said premises during said term, of like assay to that retained by said lessee, delivered at.....as soon as mined, without offset, deduction, or charge whatever, except lessor's proportion for packing.

To deliver up to said lessor the said premises, with the appurtenances and all improvements.....in good order and condition, with all shafts and tunnels and other passages thoroughly clear of rubbish and drained, and the mine in all points ready for immediate continued working (accidents not arising from neg-

ligence alone excusing), without demand or further notice, on said.....day of....., 19....., at noon, or at any time previous, upon demand for forfeiture.

And finally, upon the violation by said lessee, or any person under him, of any covenant or covenants hereinbefore reserved, the term of this lease shall, at the option of said lessor, expire, and the same and said premises with the appurtenances shall become forfeit to said lessor; and said lessor or his agent may thereupon, after demand of possession in writing, enter upon said premises and dispossess all persons occupying the same, with or without force, and with or without process of law; or at the option of said lessor, the said tenant and all persons found in occupation may be proceeded against as trespassers from the beginning of said term both as to realty and the ore served therefrom; or as guilty of unlawful detainer.

Each and every clause and covenant of this indenture shall extend to the heirs, executors and administrators of all parties hereto; and to the assigns of said lessor; and as said lessor may elect, to the assigns of said lessee.

In witness whereof, The said parties, lessor and lessee, have hereunto set their hands and seals the day and year first above written.

.....(Seal.)

.....(Seal.)

(Here add acknowledgment before Notary Public.)

Section 1165.—OIL AND GAS LEASES.—The law is more strictly applied to leases for oil and gas purposes than to any others. Other minerals, being of solid formation, are in place within certain boundaries, or, being placer, yet are not usually shifting nor fluctuating. Oil and gas are fugitive and wandering, and their existence within the limits of a particular tract is uncertain. Some of the principles of law applied to oil and gas leases are as follows:

(a) *Right to Bore for Oil Necessarily Exclusive.*—The Supreme Court of the United States has decided that the right to bore for oil or gas within a given area is necessarily exclusive, owing to the peculiar nature of the operations. Therefore, if the owner of land leases to another the right to bore for oil or gas within a certain described area, he is prohibited, whether expressed in the lease or not, from boring another well therein himself, and he may be prevented by injunction from interfering with the exclusive rights of the lessee. (Decided by the Supreme Court of the United States in the case of *Brown vs. Spillman*, which decision is printed in Volume 155 of the United States Supreme Court Reports, page 665.)

(b) *Lessee Must Begin Operations Within a Reasonable Time.*—If the lease is silent as to the time when the lessee must begin boring, the law fills the gap by providing that he must begin operations within a reasonable time. What is a reasonable time will depend upon the particular case and all the circumstances; for instance, the nature of the country, the ease or difficulty with which machinery may be brought on the ground, the availability of labor, etc.

(c) *Failure to Commence Work Forfeits the Lease.* Although the lease is for a definite term, yet a failure to commence work within the time named, or, if no time is named, within a reasonable time, forfeits the lease.

(d) *Work Must Be Prosecuted With Diligence.*—When work is once begun, it must be carried on with diligence. This does not mean every day, or every hour. But there must not be an unreasonable or prolonged cessation from actual operations. The work must be carried on so steadily, and with such practical application, as will show the good faith of the lessee.

(e) *Lease Must Be Literally Complied With.*—An oil lease must be literally complied with. If the lessee agrees to sink a well of a certain bore, he will not comply with

his lease by sinking a well of a smaller bore. He must give it the size and capacity agreed on.

(f) *Failure to Find Oil*.—Where the lease is for a fixed period, and as much longer as oil is found or produced in paying quantities, if oil is not found in paying quantities within the time, the lease is forfeited.

(g) *Net Proceeds*.—Where the lessee agrees to pay the lessor one-tenth, or any other portion, of the profits realized from the sale of the oil produced, the word “profits” does not mean the gross output, but only the net amount realized after deducting expenses.

(h) *Failure to Pay Royalty*.—A failure to pay the royalty agreed on by the lessee will forfeit the lease, at the option of the lessor.

Section 1166.—**FORM OF OIL LEASE**.—The following is a form of oil lease. The lease, if it is to be recorded, should be acknowledged:

THIS LEASE, Made the.....day of.....,  
19....., by and between.....

.....  
.....  
of the County of....., State of California, lessor.....,  
and .....

.....  
lessee.....

WITNESSETH: That said lessor....., for and in consideration of the rents, covenants, and agreements hereinafter mentioned, reserved, and contained on the part and behalf of said lessee..... to be paid, kept, and performed, does by these presents grant, remise, and let unto said lessee....., the exclusive right, privilege, and easement of sinking, boring, developing, and working to any desired depth, wells for the extraction of natural gas, petroleum, kerosene, coal oil, and other oil, gaseous and volatile substances, and of taking from such wells, and appropriating, having, using, and disposing of any and all of said substances, in all the certain tract of land situate in the County of....., State of



California, described as follows, to-wit: .....

(Here describe land.)

and also the right, privilege, and easement of conducting and carrying away from the said wells and other wells that may be sunk or bored by said lessee, on adjacent and contiguous lands through pipes underground, as hereinafter provided, all natural gas, petroleum, kerosene, coal oil, and other oil, gaseous, and volatile substances extracted from said wells.

To have and to hold all of said rights, privileges, and easements unto said lessee..... exclusively from the..... day of....., 19....., for and during the term of..... years. with the right to said lessee..... to a renewal of this lease from said lessor..... for a second term of..... years, from and after the expiration hereof upon the terms hereinafter provided.

Said lessor..... further agrees that said lessee..... may occupy and use at one or more places on said tract of land, an area not to exceed..... acres, upon which to sink a well, wherever a well may be bored thereon. A piece of land shall be selected without unnecessary injury to the lessor....., of such shape as the lessee..... may desire for boring such wells and operating the machinery used in boring, working, and casing the same, and care and storage of the product, said piece of land to be so used so long during the term of this lease as is necessary for said purposes.

It is further understood, that should any natural gas, petroleum, kerosene, coal oil, or other oil, gaseous or volatile substances be produced from said wells, or from wells sunk or bored by the lessee on adjacent or contiguous lands, the said lessee shall have the right to enter upon said lands and dig trenches from said wells through said lands, without unnecessary injury to the lessor, and lay pipes therein for conveying away therefrom any and all of said substances, provided the top or upper surface of said pipes are laid at least..... inches below the surface of the ground, and the trenches in which they

are laid are well filled in with earth so as not to interfere with the full and free cultivation or other use or enjoyment of said lands by the lessor, but no such trenches are to be dug so as to interfere with the use of or to injure.....or other improvements on said premises at the time such trenches are dug, and none are to be dug through any.....

.....without giving the owner written notice thereof, and paying therefor the value of all property injured or destroyed thereby; and no pipe is to be laid across any creek or slough so as in any way to obstruct or interfere with the free and full flow of water through the same, and all pipes laid through said lands are to be made tight and secure so as not to permit the escape therefrom of any substances injurious to any property, and should any such substance escape from such pipes and injure any such property (and the lessee should fail to repair such pipes and prevent such escape and stop such injury, within.....days after receiving from the lessor a written notice so to do), then the lessee shall be liable for and shall pay to the owner all damages so caused.

It is further understood and agreed by and between the parties hereto, that the lessee, so long as this lease remains in full force, is to be the sole and exclusive owner for and during the full term of this lease, and of every renewal thereof, of all natural gas, petroleum, kerosene, coal oil, and other oil, gaseous, and volatile substances extracted from wells on said land; and the lessor shall have no right during the continuance of this lease or any renewal thereof before default in the payment of the royalty hereafter mentioned, to bore or sink any well or wells for natural gas, petroleum, kerosene, coal oil, or other oil, gaseous or volatile substances on any of said land, or to use or take any such substance therefrom; but the lessor is at all times to be the sole and exclusive owner of all water that may flow therefrom, provided that the lessee may use sufficient of said water to operate and run any steam engines and boilers used at or near said well for boring or working the same, and subject to the uses herein provided, shall permit the flow of water

from said wells for the use and benefit of the lessor, so far as the same may flow without interfering with the proper use of the wells by the lessee.

And the lessee shall have the right at all times during the continuance of this lease or any renewal thereof, to enter upon and pass over said land to and from all wells bored thereon as herein provided; but he is to do no damage to any of said premises without paying a fair and reasonable compensation therefor within..... days after such damage is done, and will give the lessor notice in writing before commencing to bore a well on any portion of said land.

It is further understood and agreed, that the lessee shall at all times during the existence of this lease have the right to enter upon and remove from said land all improvements, machinery, well-casing, and all other property placed by him thereon or in wells thereon.

It is further understood and agreed, that the lessee shall, so long as this lease remains in force, pay to the lessor the value at the well or wells of the..... part of all the gas, oil, or other products herein mentioned, said value to be ascertained and fixed at the point of production, on or before the..... day of each month, and payment shall be made on the..... day of each and every month for all gas, oil, or other products produced during the preceding calendar month.

It is expressly and distinctly understood and agreed between the parties hereto, that it shall at all times be the privilege of the lessee to discontinue and terminate this lease by a failure to pay any installment of monthly royalty with..... days after the same becomes due as herein provided, and such failure shall operate ipso facto as a surrender of this lease, and upon such surrender the lessee shall be discharged from all liability to pay any rent to become due by the terms of this lease.

And should any well or wells bored or sunk on said land as herein provided be abandoned by the lessee, he shall give the lessor..... days' written notice of his intention to abandon the same. If the lessor so desires, and shall pay to said lessee within.....

days the costs of the casing already in said well or wells, the lessee agrees to sell the same to the lessor at the actual cost of said casing delivered at the mouth of the well, and thereupon the lessor shall become the owner of such well or wells and all of the products thereof of any kind or nature.

Nothing herein contained is to be so construed as to affect the right of the lessor to fully possess, occupy, and enjoy said lands subject to the conditions herein expressed in favor of the lessee.

It is understood and agreed between the parties hereto that wherever the term lessor is used in this lease, it extends to and includes the heirs, executors, administrators, and assigns of the lessor named herein; and the term lessee extends to and includes the heirs, executors, administrators, and assigns of the lessee herein named.

And now it is further understood and agreed by all the parties hereto, that if none of said natural gas, oil, or other kindred substance is found in or near said lands, and the lessee does not proceed to develop said leased lands within.....months from this date, and complete a well within.....months thereafter, then this lease shall terminate and be of no value, otherwise to remain in full force and effect.

In witness whereof, the said parties have hereunto set their hands and seals the day and year first above written.

.....(Seal.)

.....(Seal.)

Section 1167.—**MINING DEEDS.**—A mining claim may be sold and transferred by deed, either before or after a patent has been applied for or obtained. The locator of a mining claim obtains the legal title by his location, and may transfer his title at any time.

Section 1168.—**FORM OF MINING DEED.**—The following is a form of mining deed for quartz. If used for placer claim, the description should be changed so as to apply:



THIS INDENTURE, made the.....day of  
 ....., in the year of our Lord one thousand nine  
 hundred and....., between.....  
 ....., of the County of....., and State  
 of California, party of the first part, and.....  
 ....., of the County of....., and State  
 of California, party of the second part;

Witnesseth, That the said party of the first part, for  
 and in consideration of the sum of.....  
 Dollars, lawful money of the United States of America,  
 to him in hand paid by the said party of the second part,  
 the receipt whereof is hereby acknowledged, hath grant-  
 ed, bargained, sold, remised, released, and forever quit-  
 claimed, and by these presents does grant, bargain, sell,  
 remise, release, and forever quitclaim, unto the said  
 party of the second part, his heirs and assigns, the  
 .....lode, as located, surveyed, recorded,  
 and held by said party of the first part, situated in  
 .....mining district, .....  
 County, State of California, and named and called.....

.....Mine, together with all the dips, spurs, and  
 angles, and also all the metals, ores, gold and silver bear-  
 ing quartz, rock, and earth therein, and all the rights,  
 privileges, and franchises thereto incident, appendant,  
 and appurtenant, or therewith usually had and enjoyed;  
 and also, all and singular the tenements, hereditaments,  
 and appurtenances thereunto belonging, or in any wise  
 appertaining, and the rents, issues and profits thereof;  
 and also, all the estate, right, title, interest, property,  
 possession, claim, and demand whatsoever, as well in law  
 as in equity, of the said party of the first part, of, in, or  
 to the said premises, and every part and parcel thereof,  
 with the appurtenances.

To have and to hold, all and singular, the said prem-  
 ises, together with the appurtenances and privileges  
 thereto incident, unto the said party of the second part,  
 his heirs and assigns forever. In witness whereof the  
 said party of the first part has hereunto set his hand and  
 seal the day and year first above written.

.....(Seal.)  
 (Here add acknowledgment before Notary.)

Section 1169.—WORKING MINE ON SHARES.—A valid agreement may be made for the working of a mine on shares, and such agreement does not constitute and will not be considered a lease of the mining claim. Under such a contract, the parties have a common interest in the products of the mine when taken out. Such a contract does not create the relation of landlord and tenant, but fixes a rule of compensation for services rendered. It is, in all its essential features, a contract for labor to be performed and to be paid for by a share of the profits realized from such labor. (Decided by the Supreme Court of California in the case of Hudepahl vs. Liberty Hill Mining Co., which decision is printed in Volume 80 of the California Reports, page 553.)

Section 1170.—WHEN BOUNDARY MARKS ARE SUFFICIENT.—The boundary marks are always sufficient to sustain a location if they are so distinct and plain that the claim can be identified on the ground. In a case in Siskiyou County, two adjoining mining claims were each marked at the corners by four stakes about a foot and a half long, flattened on two sides, and driven into the ground about four inches; two stakes being at the ends of the dividing line common to both claims; some stakes being in the brush, and others in the open ground. In the middle of the dividing line was a tree blazed on both sides, on one of which the notices of location were posted, describing the claims by courses and distances, running from the tree to a stake, and from stake to stake to point of beginning. The ledge on both claims had been sufficiently developed to show its existence and direction. The Supreme Court held that the law as to marking the location on the ground was sufficiently complied with, under the most stringent construction of the law. (Decided by the Supreme Court of California in the case of Eaton vs. Norris, which decision is printed in Volume 131 of the California Reports, page 561.)

**Section 1171.—ERROR IN DESCRIPTION IN LOCATION NOTICE.**—The description in a notice of location of a mining claim, specifying the number of acres claimed, is sufficient, if it designate the land by the adjoining tracts on the north, east, and south, and by unoccupied lands on the west; and the insertion of the wrong legal subdivisions will not invalidate it. (Decided by the Supreme Court of California in the case of *Duryea vs. Boucher*, which decision is printed in Volume 67 of the California Reports, page 141.)

**Section 1172.—CHARACTER OF ANNUAL ASSESSMENT WORK.**—Whether the character of the annual assessment work is of the kind required by law is always a question of fact, to be determined by the surrounding circumstances. Not all expenditures made with a view to working a mine would be considered work expended upon a mine for the purpose of holding it; as, for instance, work done at a distance from the mine in the construction of a mill. On the other hand, it has been decided that the services of a watchman looking after the buildings erected to work a mine properly constitutes assessment work, though the mine is idle at the time. (Decided by the Supreme Court of California in the case of *Altoona Quicksilver Mining Co. vs. Integral Quicksilver Mining Co.*, which decision is printed in Volume 114 of the California Reports, page 100.)

**Section 1173.—TIME WITHIN WHICH RELOCATION CAN BE MADE.**—The law of California gives to the occupant of a mining claim thirty days after the expiration of the year within which to file his affidavit of assessment work done, in the office of the County Recorder; and the mine is not open to relocation until after the expiration of the thirty days. For instance, the occupant has the whole of the calendar year succeeding the date of his location in which to do his assessment work; then he has thirty days more in which to file his affidavit of work done with

the County Recorder, and no relocation can be valid within such times. (Decided by the Supreme Court of California in the case of *Harris vs. Kellogg*, which decision is printed in Volume 117 of the California Reports, page 484.)

Statutes of 1891, page 219.

Section 1174.—RESUMPTION OF WORK.—As already stated, the locator of a mining claim must expend upon it in labor or improvements \$100 each year, and non-compliance with this requirement renders the claim subject to relocation by others, unless, before such relocation, the original locator, his heirs, assigns, or legal representatives, have resumed work upon the claim. This resumption of work, however, must be bona fide in character and with the intention of completing the amount of work due. It is not sufficient, when the claim has become subject to relocation, for the claimant to go upon it and do a few hours' or a few days' work, and then quit, thinking that he has thus, by such perfunctory resumption, done all that is sufficient to hold his claim for another year; he must resume work in good faith, with the intention of completing the full amount required by law. (Decided by the Supreme Court of California in the case of *McCormick vs. Baldwin*, which decision is printed in Volume 104 of the California Reports, page 227.)

Section 1175.—FAILURE TO COMPLY WITH LOCAL CUSTOMS IN WORKING MINING CLAIMS.—A right to hold and work a mining claim when acquired may be lost by a failure or neglect to comply with the rules and regulations of the miners, relative to the acquisition and tenure of claims, in force in the district where the claim is located; and if such rules and regulations are not complied with by those holding claims in the district, the ground becomes once more open to the occupation of the



next comer. (Decided by the Supreme Court of California in the case of *St. John vs. Kidd*, which decision is printed in Volume 26 of the California Reports, page 263.)

Section 1176.—OVERLAPPING LOCATIONS.—It is familiar history in mining districts that claims have often been found to overlap one another to a greater or less extent. When this occurs, the law of California is, in so far as the ground taken was vacant, each location, if properly made in other respects, is valid and sufficient to that extent. As to the ground actually covered by the two locations, the right will be determined by ascertaining which location was first made. If A makes a location today, and B makes a location tomorrow, and the location of B covers a part of the ground located by A the day before, B will lose so much of his location as overlaps the location of A; for A was first in time, and thus acquired a prior right. But B will not lose his whole location. So much of it as does not overlap the prior location will be good, and he can hold that much. (Decided by the Supreme Court of California in the case of *Doe vs. Tyler*, which decision is printed in Volume 73 of the California Reports, page 21.)

Section 1177.—INTERSECTING VEINS.—Where two veins or lodes of mineral belonging to different owners intersect, the owner of the vein which was first located has the right to the ore in the space of intersection, but the other owner has a right of way through such space for the purpose of working his vein. (Decided by the Supreme Court of California in the case of *Wilhelm vs. Silvester*, which decision is printed in Volume 101 of the California Reports, page 358.)

Section 1178.—RULE THAT END LINES SHALL PARALLEL EACH OTHER.—The Revised Statutes of the United States say that “the end lines of each claim shall be

parallel with each other.” But this does not mean that the two end lines must be *exactly* parallel. In the case of Doe vs. Sanger, a San Bernardino County mining suit, the Supreme Court of California stated the true rule as follows: “It has been held that the provisions of the Federal statutes relating to lode claims were passed with the understanding, founded upon the general practice of miners, that the surface locations of such claims will be made lengthwise along the general direction of the lode or vein in the general form of a parallelogram, with side lines along the lode, and the end lines across it. But suppose that a surface location should be made, for instance, in the shape of an octagon. In such a case there would be no end lines and no side lines, and if the locator could go outside his lines in one direction he could do so in eight directions, and encroach upon his neighbors from every point of the compass. If, however, a location is made in substantial compliance with the intent of the statute—that is, where there are two side lines running along the course of the vein, and two shorter end lines running across it, so that the two sets of lines are distinct, and apparent—such a location is not void, but gives the right to follow a vein laterally, although the original end lines may not be exactly parallel, or although they may differ from a true parallel.” (Decided by the Supreme Court of California in the case of Doe vs. Sanger, which decision is printed in Volume 83 of the California Reports, page 203.)

Section 1179.—EXTRA-LATERAL RIGHT, OR RIGHT TO PURSUE THE VEIN OR LODE ON ITS DIP BEYOND THE SIDE LINES OF THE CLAIM.—Section 2322 of the Revised Statutes of the United States provides: “The locators of all mining locations shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and all veins, lodes, and ledges throughout their entire depth the top or apex of

which lies inside of such surface lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside of the vertical side lines of such surface locations.” A mineral vein or lode seldom or never descends vertically into the earth, but on its downward course makes an angle with the vertical—or, in popular terms, it does not go straight down, but in a slanting direction—so that, if followed far enough into the interior of the earth, it will eventually be found to extend outside of the side lines of the claim. In other words, the vein eventually reaches the point in the interior of the earth where, if a vertical line were run to the surface it would strike a point outside the surface boundaries of the claim. The right to thus follow the vein on its downward course beyond the side lines of the claim is sometimes called the extra-lateral right, and is conferred by the Section of the Revised Statutes of the United States just quoted. In thus following the vein on its dip, the miner is confined, however, to that part of it which is found between the end lines of his claim extended in their own direction. The law prescribes that the end lines of a claim shall be parallel with each other. Yet for the full enjoyment of this extra-lateral right it is important that the end lines of the claim should follow this requirement of parallelism; for it has been held by the courts that where the end lines were not parallel, but converged in the direction of the dip of the vein, the miner could not pursue the vein outside of his side lines beyond the point where his converging end lines extended met. On the other hand, where the end lines diverged in the direction of the dip, thus making the portion of the vein included within them larger the farther such end lines were extended, it has been held that the miner could not take the ore from any greater length of vein outside of his side lines than was included between his end lines as laid down on the ground.

Section 1180.—DAMAGES FOR TRESPASS ON MINING CLAIM.—One who unintentionally, and in the honest belief that he is lawfully exercising a right which he has, enters upon the mining property of another and removes his ore, is liable in damages for its value, and for no more. He may limit the recovery of the owner by deducting from the value of the ore at the mouth of the shaft the cost of mining and transporting it to that point. But one who wilfully and intentionally takes ores from the land of another is liable to him for the full value of the property taken, at the time of his conversion of it, without any deduction for the labor bestowed or expense incurred in removing it and preparing it for the market.

Section 1181.—STATE HOMESTEAD ON MINING CLAIM. The locator of a mining claim may, under the State law, declare a homestead upon it, if he is living on it; and when that is done it has all the characteristics of a homestead declared upon any other character of land; subject, however, to the holder complying with the requirements of the law relating to the holding of mining claims until issue of patent from the United States Government. (Decided by the Supreme Court of California in the case of Gaylord vs. Place, which decision is printed in Volume 98 of the California Reports, page 472.)

Section 1182.—SCHOOL LANDS.—The law of Congress granting certain agricultural lands to the State of California for school purposes, and providing that mineral lands shall not be subdivided into sections, public lands belonging to the State under said Act, if agricultural, which the proper United States officials have platted into a section and classified as agricultural lands, and concerning which the receiver of the public land office has certified that the State's title thereto under said Act is free from adverse claims, are not, after their disposal by the State, subject to re-entry as mineral lands; the



determination of the United States officials that the lands were agricultural being conclusive against a collateral attack. (Decided by the Supreme Court of California in the case of Saunders vs. La Purisima Gold Mining Co., which decision is printed in Volume 125 of the California Reports, page 159.)

Section 1183.—AUTHORITY OF MINE SUPERINTENDENT TO PURCHASE SUPPLIES.—Mine Superintendents, by virtue of their position, have authority to purchase all supplies necessary for the operation of the mine; and when they do so the owners will be bound to pay for them. In one case it was held by our Supreme Court that the owner of the mine was bound to pay for provisions ordered by the superintendent for a boarding house at which the miners lived, and the court said: "The record discloses the fact that its was absolutely necessary that provisions should be furnished this boarding house, in order that the mine might continue in operation; and it would seem that, aside from any express authority from the defendant to purchase these articles, and regardless of the question of ostensible agency, the respective superintendents of the mine, by virtue of their positions alone, had the power to bind the defendant for the payment of these goods." (Decided by the Supreme Court of California in the case of Heald vs. Hendy, which decision is printed in Volume 89 of the California Reports, page 632.)

Section 1184.—HYDRAULIC MINING.—Hydraulic mining, as the term is used in the laws of California, is mining by means of the application of water, under pressure, through a nozzle, against a natural bank. It may be carried on in this state wherever and whenever it can be done without material injury to the navigable streams or the lands adjacent thereto.

Civil Code, Sections 1424, 1425.

Section 1185.—TAILINGS AND DEBRIS.—No person or corporation has the right to cover his neighbor's land with debris from mine or mill, nor to permit any of the tailings or refuse matter to flow or be placed on the land of another. For the violation of another's right of use and possession, by flowing or covering his land with debris, or by causing his soil to wash or cave, the owner of the mine will be liable in damages, and the injury may be stopped by injunction.

Section 1186.—CONSOLIDATION OF MINING CORPORATIONS.—Two or more mining corporations owning claims lying in the same vicinity may consolidate upon terms agreed upon by the respective Boards of Directors or Trustees of such corporations, provided the written consent of stockholders representing two-thirds of the capital stock of each company be obtained. Such consolidation does not relieve the respective companies or their stockholders of existing indebtedness. In case of such consolidation, notice of the same must be given by advertising for at least one month in a newspaper in the county where the mining property is situated, and also in a newspaper published in the county where the principal place of business of any of such corporations shall be. When the consolidation is completed a certificate thereof, containing the manner and terms of the consolidation, must be filed in the office of the County Clerk of the county in which the original certificate of incorporation of any of said companies was filed, and a copy thereof must be filed in the office of the Secretary of State. Such certificate must be signed by a majority of each Board of Directors or Trustees of the original companies; and they must within thirty days after the filing of such certificate, and after at least ten days' public notice, call a meeting of the stockholders of all of said companies so consolidated, to elect a Board of Trustees or Directors for the consolidated company for the ensu-

ing year. The said certificate must also contain all the matters required to be stated in Articles of Incorporation.

Civil Code, Section 361.

Section 1187.—TRANSFER OF STOCK IN MINING CORPORATIONS.—The Civil Code of California, Sections 586, 587, makes the following particular provisions about the transfer of stock in mining corporations: “Any corporation organized in this state for the purpose of mining or carrying on mining operations in or without this state, may establish and maintain agencies in other states of the United States, for the transfer and issuing of their stock; and a transfer or issue of the stock at any such transfer agency, in accordance with the provisions of its by-laws, is valid and binding as fully and effectually for all purposes as if made upon the books of such corporation at its principal office within this state. The agencies must be governed by the by-laws and the directors of the corporation. All stock of such corporation, issued at a transfer agency, must be signed by the president and secretary of the corporation, and countersigned at the time of its issue by the agent having charge of the transfer agency.”

Civil Code, Sections 586, 587.

Section 1188.—HOURS OF WORK IN UNDERGROUND MINES.—The period of employment for all persons working in underground mines in search of minerals, whether base or precious, or who are engaged in such underground mines for other purposes, or who are employed or engaged in other underground workings whether for the purpose of tunneling, making excavations or to accomplish any other purpose or design, or who are employed in smelters and other institutions for the reduction or refining of ores or metals, shall not exceed eight hours within any twenty-four hours, and the hours of

employment in such employment or work day shall be consecutive, excluding, however, any intermission of time for lunch or meals; *provided* that, in the case of emergency where life or property is in imminent danger, the period may be a longer time during the continuance of the exigency or emergency.

Act of the Legislature, approved March 10, 1909.

Section 1189.—ABANDONED OIL WELLS.—Abandoned oil wells must be filled by the owner, with clay, earth or cement mortar, thoroughly packed and tamped, to a point above the upper oil-bearing strata. While withdrawing the casing, water must be effectually and permanently excluded.

Act of the Legislature, approved March 20, 1909.

Section 1190.—CAPPING GAS WELLS.—All persons, firms, corporations and associations are prohibited from wilfully permitting any natural gas wastefully to escape into the atmosphere.

All persons, firms, corporations or associations digging, drilling, excavating, constructing or owning or controlling any well from which natural gas flows shall upon the abandonment of such well cap or otherwise close the mouth of or entrance to the same in such a manner as to prevent the unnecessary or wasteful escape into the atmosphere of such natural gas. And no person, firm, corporation or association owning or controlling land in which such well or wells are situated shall wilfully permit natural gas flowing from such well or wells, wastefully or unnecessarily to escape into the atmosphere.

Any person, firm, corporation or association who shall wilfully violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or by imprisonment in the



county jail of not more than one year, or by both such fine and imprisonment.

For the purposes of this act each day during which natural gas shall be wilfully allowed wastefully or unnecessarily to escape into the atmosphere shall be deemed a separate and distinct violation of this act.

Act of the Legislature, approved March 25, 1911.

Section 1191.—EXTRACTION OF MINERALS FROM THE WATERS OF STREAMS OR LAKES.—Minerals contained in the waters of any stream or lake in this state shall not be extracted from said waters except upon charges, terms and conditions prescribed by law. No person, firm, corporation or association shall hereafter gain the right to extract or cause to be extracted said minerals from said waters by user, custom, prescription, appropriation, littoral rights, riparian rights, or in any manner other than by lease from or express permission of the state as prescribed by law; and no such lease or permission shall be granted for a longer period than twenty-five years.

Act of the Legislature, approved April 14, 1911.

Section 1192.—MORTGAGE ON MINING PROPERTY.—The directors of a mining corporation have no power or authority to mortgage the mining ground of the company without a ratification by the holders of two-thirds of the capital stock. The want of such ratification can be raised by anyone who connects himself with the title of the corporation which owned the property, as well as by the stockholders thereof. The consent of the stockholders cannot be presumed from the mere fact of the execution of the mortgage, whether under the corporate seal or not.

(Decided by the District Court of Appeals of California, Second District, in the case of Mrs. M. T. Bennett vs. Red Cloud Mining Company, which decision is printed in Volume 11 of California Appellate Decisions, page 623.)

Section 1192a.—OIL AND GAS PERMITS AND LEASES ON GOVERNMENT LAND.—1920 ACT OF CONGRESS.—The Congress of the United States passed a law, in effect February 25, 1920, to promote the mining of coal, phosphate, oil, oil shale, gas and radium, on the public lands.

(a) *Oil and Gas Permit*.—Referring to oil and gas in California, the law reads: That the Secretary of the Interior is hereby authorized, under such necessary and proper rules and regulations as he may prescribe, to grant to any applicant qualified under this Act a prospecting permit, which shall give the exclusive right, for a period not exceeding two years, to prospect for oil or gas upon not to exceed two thousand five hundred and sixty acres of land, wherein such deposits belong to the United States, and are not within any known geological structure of a producing oil or gas field, upon condition that the permittee shall begin drilling operations within six months from the date of the permit, and shall, within one year from and after the date of permit, drill one or more wells for oil or gas to a depth of not less than five hundred feet each, unless valuable deposits of oil or gas shall be sooner discovered, and shall, within two years from date of the permit, drill for oil or gas to an aggregate depth of not less than two thousand feet unless valuable deposits of oil or gas shall be sooner discovered. The Secretary of the Interior may, if he shall find that the permittee has been unable with the exercise of diligence to test the land in the time granted by the permit, extend any such permit for such time, not exceeding two years, and upon such conditions as he shall prescribe.

(b) *Location and Monuments*.—Whether the lands sought in any such application and permit are surveyed or unsurveyed the applicant shall, prior to filing his application for permit, locate such lands in a reasonably compact form and according to the legal subdivisions of the public land surveys if the land be surveyed; and in an approximately square or rectangular tract if the land

be an unsurveyed tract, the length of which shall not exceed two and one-half times its width, and if he shall cause to be erected upon the land for which a permit is sought a monument not less than four feet high, at some conspicuous place thereon, and shall post a notice in writing on or near said monument, stating that an application for permit will be made within thirty days after date of posting said notice, the name of the applicant, the date of the notice, and such a general description of the land to be covered by such permit by reference to courses and distances from such monument and such other natural objects and permanent monuments as will reasonably identify the land, stating the amount thereof in acres, he shall during the period of thirty days following such marking and posting, be entitled to a preference right over others to a permit for the land so identified. The applicant shall, within ninety days after receiving a permit, mark each of the corners of the tract described in the permit upon the ground with substantial monuments, so that the boundaries can be readily traced on the ground, and shall post in a conspicuous place upon the lands a notice that such permit has been granted and a description of the lands covered thereby.

(c) *Leases*.—That upon establishing to the satisfaction of the Secretary of the Interior that valuable deposits of oil or gas have been discovered within the limits of the land embraced in any permit, the permittee shall be entitled to a lease for one-fourth of the land embraced in the prospecting permit: *Provided*, That the permittee shall be granted a lease for as much as one hundred and sixty acres of said lands, if there be that number of acres within the permit. The area to be selected by the permittee shall be in compact form, and, if surveyed, to be described by the legal subdivisions of the public-land surveys; if unsurveyed, to be surveyed by the government at the expense of the applicant for lease in accordance with rules and regulations to be prescribed

by the Secretary of the Interior, and the lands leased shall be conformed to and taken in accordance with the legal subdivisions of such surveys; deposits made to cover expense of surveys shall be deemed appropriated for that purpose, and any excess deposits may be repaid to the person or persons making such deposit or their legal representatives.

(d) *Term of Lease—Royalty.*—Such leases shall be for a term of twenty years upon a royalty of 5 per centum in amount or value of the production and the annual payment in advance of a rental of \$1 per acre, the rental paid for any one year to be credited against the royalties as they accrue for that year, with the right of renewal.

(e) *Preference Right.*—The permittee shall also be entitled to a preference right to a lease for the remainder of the land in his prospecting permit at a royalty of not less than 12½ per centum in amount or value of the production, and under such other conditions as are fixed for oil or gas leases in this Act, the royalty to be determined by competitive bidding or fixed by such other method as the Secretary may by regulations prescribe: *Provided*, that the Secretary shall have the right to reject any or all bids.

(f) *Royalty Before Lease.*—That until the permittee shall apply for lease to the one-quarter of the permit area heretofore provided for he shall pay to the United States 20 per centum of the gross value of all oil or gas secured by him from the lands embraced within his permit and sold or otherwise disposed of or held by him for sale or other disposition.

(g) *Drilling and Waste.*—That all permits and leases of lands containing oil or gas, made or issued under the provisions of this Act, shall be subject to the condition that no wells shall be drilled within two hundred feet of any of the outer boundaries of the lands so permitted or leased, unless the adjoining lands have been patented or the title thereto otherwise vested in private owners, and



to the further condition that the permittee or lessee will, in conducting his explorations and mining operations, use all reasonable precautions to prevent waste of oil or gas developed in the land, or the entrance of water through wells drilled by him to the oil sands or oil-bearing strata, to the destruction or injury of the oil deposits. Violations of the provisions of this section shall constitute grounds for the forfeiture of the permit or lease, to be enforced through appropriate proceedings in courts of competent jurisdiction.

(h) *Lease in Producing Oil or Gas Field.*—That all unappropriated deposits of oil or gas situated within the known geologic structure of a producing oil or gas field and the unentered lands containing the same, not subject to preferential lease, may be leased by the Secretary of the Interior to the highest responsible bidder by competitive bidding under general regulations to qualified applicants in areas not exceeding six hundred and forty acres and in tracts which shall not exceed in length two and one-half times their width, such leases to be conditioned upon the payment by the lessee of such bonus as may be accepted and of such royalty as may be fixed in the lease, which shall not be less than  $12\frac{1}{2}$  per centum in amount or value of the production, and the payment in advance of a rental of not less than \$1 per acre per annum thereafter during the continuance of the lease, the rental paid for any one year to be credited against the royalties as they accrue for that year.

(i) *Renewal of Lease.*—Leases shall be for a period of twenty years, with the preferential right in the lessee to renew the same for successive periods of ten years, upon such reasonable terms and conditions as may be prescribed by the Secretary of the Interior, unless otherwise provided by law at the time of the expiration of such periods. Whenever the average daily production of any oil well shall not exceed ten barrels per day, the Secretary of the Interior is authorized to reduce the royalty on future production when in his judgment the wells cannot

be successfully operated upon the royalty fixed in the lease. The provisions of this paragraph shall apply to all oil and gas leases made under this Act.

(j) *Relinquishment of Claims Acquired Under Prior Mining Laws.*—That upon relinquishment to the United States, filed in the General Land Office within six months after the approval of this Act, of all right, title, and interest claimed and possessed prior to July 3, 1910, and continuously since, by the claimant or his predecessor in interest under the preexisting placer mining law, to any oil or gas bearing land upon which there has been drilled one or more oil or gas wells to discovery embraced in the executive order of withdrawal issued September 27, 1909, and not within any naval petroleum reserve, and upon payment as royalty to the United States of an amount equal to the value at the time of production of one-eighth of all the oil or gas already produced except oil or gas used for production purposes on the claim, or unavoidably lost, from such land, the claimant, or his successor, if in possession of such land, undisputed by any other claimant prior to July 1, 1919, shall be entitled to a lease thereon from the United States for a period of twenty years, at a royalty of not less than 12½ per centum of all the oil or gas produced except oil or gas used for production purposes on the claim, or unavoidably lost: *Provided*, that not more than one-half of the area, but in no case to exceed three thousand two hundred acres, within the geologic oil or gas structure of a producing oil or gas field shall be leased to any one claimant under the provision of this section when the area of such geologic oil structure exceeds six hundred and forty acres. Any claimant or his successor, subject to this limitation, shall, however, have the right to select and receive the lease as in this section provided for that portion of his claim or claims equal to, but not in excess of, said one-half of the area of such geologic oil structure, but not more than three thousand two hundred acres.

(k) *Naval Petroleum Reserve*.—All such leases shall be made and the amount of royalty to be paid for oil and gas produced, except oil or gas used for production purposes on the claim, or unavoidably lost, after the execution of such lease, shall be fixed by the Secretary of the Interior under appropriate rules and regulations: *Provided, however*, that as to all like claims situate within any naval petroleum reserve the producing wells thereon only shall be leased, together with an area of land sufficient for the operation thereof, upon the terms and payment of royalties for past and future production as herein provided for in the leasing of claims. No wells shall be drilled in the land subject to this provision within six hundred and sixty feet of any such leased well without the consent of the lessee: *Provided, however*, that the president may, in his discretion, lease the remainder or any part of any such claim upon which such wells have been drilled, and in the event of such leasing said claimant or his successor shall have a preference right to such lease: *And provided further*, that he may permit the drilling of additional wells by the claimant or his successor within the limited area of six hundred and sixty feet theretofore provided for upon such terms and conditions as he may prescribe.

No claimant for a lease who has been guilty of any fraud or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith, shall be entitled to any of the benefits of this section.

(1) *Conflicting Claims*.—In case of conflicting claimants for leases, the Secretary of the Interior is authorized to grant leases to one or more of them as shall be deemed just. All leases hereunder shall inure to the benefit of the claimant and all persons claiming through or under him by lease, contract, or otherwise, as their interests may appear, subject, however, to the same limitation as to area and acreage as is provided for claimant in this

section: *Provided*, that no claimant acquiring any interest in such lands since September 1, 1919, from a claimant on or since said date claiming or holding more than the maximum allowed claimant under this section, shall secure a lease thereon or any interest therein; but the inhibition of this proviso shall not apply to an exchange of any interest in such lands made prior to the 1st day of January, 1920, which did not increase or reduce the area or acreage held or claimed in excess of said maximum by either party to the exchange: *Provided further*, that no lease or leases under this section shall be granted, nor shall any interest therein inure, to any person, association, or corporation for a greater aggregate area or acreage than the maximum in this section provided for.

That whenever the validity of any gas or petroleum placer claim under preexisting law to land embraced in the executive order of withdrawal issued September 27, 1909, has been or may hereafter be drawn in question on behalf of the United States in any departmental or judicial proceedings, the president is hereby authorized at any time within twelve months after the approval of this Act to direct the compromise and settlement of any such controversy upon such terms and conditions as may be agreed upon, to be carried out by an exchange or division of land or division of the proceeds of operation.

(m) *Protection of Bona Fide Occupants or Claimants.*—That any person who on October 1, 1919, was a bona fide occupant or claimant of oil or gas lands under a claim initiated while such lands were not withdrawn from oil or gas location and entry, and who had previously performed all acts under then existing laws necessary to valid locations thereof except to make discovery, and upon which discovery had not been made prior to the passage of this Act, and who has performed work or expended on or for the benefit of such locations an amount equal in the aggregate of \$250 for each location, if application therefor shall be made within six months



from the passage of this Act, shall be entitled to prospecting permits thereon upon the same terms and conditions, and limitations as to acreage, as other permits provided for in this Act; or where any such person has heretofore made such discovery, he shall be entitled to a lease thereon under such terms as the Secretary of the Interior may prescribe unless otherwise provided for: *Provided*, that where such prospecting permit is granted upon land within any known geologic structure of a producing oil or gas field, the royalty to be fixed in any lease thereafter granted thereon or any portion thereof shall be not less than 12½ per centum of all the oil or gas produced except oil or gas used for production purposes on the claim, or unavoidably lost: *Provided, however*, that the provisions of this section shall not apply to lands reserved for the use of the navy: *Provided, however*, that no claimant for a permit or lease who has been guilty of any fraud or who had knowledge or reasonable grounds to know of any fraud, or who has not acted honestly and in good faith, shall be entitled to any of the benefits of this section.

All permits or leases hereunder shall inure to the benefit of the claimant and all persons claiming through or under him by lease, contract, or otherwise, as their interests may appear.

(n) *Preference on Lands Entered as Agricultural.*—In the case of lands bona fide entered as agricultural, and not withdrawn or classified as mineral at the time of entry, but not including lands claimed under any railroad grant, the entryman or patentee, or assigns, where assignment was made prior to January 1, 1918, if the entry has been patented with the mineral right reserved, shall be entitled to a preference right to a permit and to a lease, as herein provided, in case of discovery; and within an area not greater than a township such entryman and patentees, or assigns holding restricted patents may combine their holdings, not to exceed two thousand five hundred and sixty acres for the purpose of making joint

application. Leases executed under this section and embracing only lands so entered shall provide for the payment of a royalty of not less than  $12\frac{1}{2}$  per centum as to such areas within the permit as may not be included within the discovery lease to which the permittee is entitled under section 14 hereof.

(o) *Permit May Be Canceled.*—That the Secretary of the Interior shall reserve and may exercise the authority to cancel any prospecting permit upon failure by the permittee to exercise due diligence in the prosecution of the prospecting work in accordance with the terms and conditions stated in the permit, and shall insert in every such permit issued under the provisions of this Act appropriate provisions for its cancellation by him.

(p) *Number of Leases.*—No person, association, or corporation shall take or hold, at one time, more than three oil or gas leases granted hereunder in any one state, and not more than one lease within the geologic structure of the same producing oil or gas field; no corporation shall hold any interest as a stockholder of another corporation in more than such number of leases; and no person or corporation shall take or hold any interest or interests as a member of an association or associations or as a stockholder of a corporation or corporations holding a lease under the provisions hereof, which, together with the area embraced in any direct holding of a lease under this Act, or which, together with any other interest or interests as a member of an association or associations or as a stockholder of a corporation or corporations holding a lease under the provisions hereof, for any kind of mineral leased hereunder, exceeds in the aggregate an amount equivalent to the maximum number of acres of the respective kinds of minerals allowed to any one lessee under this Act. Any interests held in violation of this Act shall be forfeited to the United States by appropriate proceedings instituted by the attorney general for that purpose in the United States district

court for the district in which the property, or some part thereof, is located, except that any ownership or interest forbidden in this Act which may be acquired by descent, will, judgment, or decree may be held for two years and not longer after its acquisition: *Provided*, that nothing herein contained shall be construed to prevent any number of lessees under the provisions of this Act from combining their several interests so far as may be necessary for the purposes of constructing and carrying on the business of a refinery, or of establishing and constructing as a common carrier a pipe line or lines of railroads to be operated and used by them jointly in the transportation of oil from their several wells, or from the wells of other lessees under this Act, or the transportation of coal: *Provided further*, that any combination for such purpose or purposes shall be subject to the approval of the Secretary of the Interior on application to him for permission to form the same: *And provided further*, that if any of the lands or deposits leased under the provisions of this Act shall be subleased, trusteeed, possessed, or controlled by any device permanently, temporarily, directly, indirectly, tacitly, or in any manner whatsoever, so that they form part of, or are in any wise controlled by any combination in the form of an unlawful trust, with consent of lessee, or form the subject of any contract or conspiracy in restraint of trade in the mining or selling of coal, phosphate, oil, oil shale, gas, or sodium entered into by the lessee, or any agreements or understanding, written, verbal, or otherwise to which such lessee shall be a party, of which his or its output is to be or become the subject, to control the price or prices thereof or of any holding of such lands by any individual, partnership, association, corporation, or control, in excess of the amounts of lands provided in this Act, the lease thereof shall be forfeited by appropriate court proceedings.

(q) *Pipe Lines*.—That rights of way through the public lands, including the forest reserves, of the United

States are hereby granted for pipe-line purposes for the transportation of oil or natural gas to any applicant possessing the qualifications provided in this Act to the extent of the ground occupied by the said pipe line and twenty-five feet on each side of the same, under such regulations as to survey, location, application, and use as may be prescribed by the Secretary of the Interior, and upon the express condition that such pipe lines shall be constructed, operated, and maintained as common carriers: *Provided*, that the government shall in express terms reserve and shall provide in every lease of oil lands hereunder that the lessee, assignee, or beneficiary, if owner, or operator or owner of a controlling interest in any pipe line or of any company operating the same which may be operated accessible to the oil derived from lands under such lease, shall at reasonable rates and without discrimination accept and convey the oil of the government or of any citizen or company not the owner of any pipe line, operating a lease or purchasing gas or oil under the provisions of this Act: *Provided further*, that no right of way shall hereafter be granted over said lands for the transportation of oil or natural gas except under and subject to the provisions, limitations, and conditions of this section. Failure to comply with the provisions of this section or the regulations prescribed by the Secretary of the Interior shall be ground for forfeiture of the grant by the United States district court for the district in which the property, or some part thereof, is located.

(r) *Rights of Way for Other Purposes.*—That any permit, lease, occupation, or use permitted under this Act shall reserve to the Secretary of the Interior the right to permit upon such terms as he may determine to be just, for joint or several use, such easements or rights of way, including easements in tunnels upon, through, or in the lands leased, occupied, or used as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in this Act,



and the treatment and shipment of the products thereof by or under authority of the government, its lessees, or permittees, and for other public purposes: *Provided*, that said Secretary, in his discretion, in making any lease under this Act, may reserve to the United States the right to lease, sell, or otherwise dispose of the surface of the lands embraced within such lease under existing law or laws hereafter enacted, in so far as said surface is not necessary for use of the lessee in extracting and removing the deposits therein: *Provided further*, that if such reservation is made it shall be so determined before the offering of such lease: *And provided further*, that the said Secretary, during the life of the lease, is authorized to issue such permits for easements herein provided to be reserved.

(s) *Assignment of Lease*.—That no lease issued under the authority of this Act shall be assigned or sublet, except with the consent of the Secretary of the Interior. The lessee may, in the discretion of the Secretary of the Interior, be permitted at any time to make written relinquishment of all rights under such a lease, and upon acceptance thereof be thereby relieved of all future obligations under said lease, and may with like consent surrender any legal subdivision of the area included within the lease. Each lease shall contain provisions for the purpose of insuring the exercise of reasonable diligence, skill, and care in the operation of said property; a provision that such rules for the safety and welfare of the miners and for the prevention of undue waste as may be prescribed by said Secretary shall be observed, including a restriction of the workday to not exceeding eight hours in any one day for underground workers except in cases of emergency; provisions prohibiting the employment of any boy under the age of sixteen or the employment of any girl or woman, without regard to age, in any mine below the surface; provisions securing the workmen complete freedom of purchase; provision requiring the

payment of wages at least twice a month in lawful money of the United States; and such other provisions as he may deem necessary to insure the sale of the production of such leased lands to the United States and to the public at reasonable prices, for the protection of the interests of the United States, for the prevention of monopoly, and for the safeguarding of the public welfare: *Provided*, that none of such provisions shall be in conflict with the laws of the state in which the leased property is situated.

(t) *Regulations by Secretary of the Interior.*—That any lease issued under the provisions of this Act may be forfeited and canceled by an appropriate proceeding in the United States district court for the district in which the property, or some part thereof, is located, whenever the lessee fails to comply with any of the provisions of this Act, of the lease, or of the general regulations promulgated under this Act and in force at the date of the lease; and the lease may provide for resort to appropriate methods for the settlement of disputes or for remedies for breach of specified conditions thereof.

That the Secretary of the Interior is authorized to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this Act, also to fix and determine the boundary lines of any structure, or oil or gas field, for the purposes of this Act: *Provided*, that nothing in this Act shall be construed or held to affect the rights of the states or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States.

(Oil and gas regulations have been issued and are contained in Circular No. 672, of the General Land Office of the United States.)

(u) *Royalty Paid in Oil or Gas.*—That all royalty accruing to the United States under any oil or gas lease or permit under this Act on demand of the Secretary of the

Interior shall be paid in oil or gas.

Upon granting any oil or gas lease under this Act, and from time to time thereafter during said lease, the Secretary of the Interior shall, except whenever in his judgment it is desirable to retain the same for the use of the United States, offer for sale for such period as he may determine, upon notice and advertisement on sealed bids or at public auction, all royalty oil and gas accruing or reserved to the United States under such lease. Such advertisement and sale shall reserve to the Secretary of the Interior the right to reject all bids whenever within his judgment the interest of the United States demands; and in cases where no satisfactory bid is received or where the accepted bidder fails to complete the purchase, or where the Secretary of the Interior shall determine that it is unwise in the public interest to accept the offer of the highest bidder, the Secretary of the Interior, within his discretion, may readvertise such royalty for sale, or sell at private sale at not less than the market price for such period, or accept the value thereof from the lessee: *Provided, however*, that pending the making of a permanent contract for the sale of any royalty, oil or gas as herein provided, the Secretary of the Interior may sell the current product at private sale, at not less than the market price: *And provided further*, that any royalty oil or gas may be sold at not less than the market price at private sale to any department or agency of the United States.

(v) *Qualifications of Applicants*—Permits may be issued to the following:

- (1) A citizen of the United States;
- (2) An association of citizens;
- (3) A corporation organized under the laws of the United States or of any state or territory thereof;
- (4) A municipality.

Act of Congress, approved February 25, 1920.

A. J. BLEDSOE, ATTORNEY-AT-LAW, Los Angeles, Cal.—  
Written opinions sent by mail, upon problems or cases  
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## PART XII.

### ESTATES OF DECEASED PERSONS

Section 1193.—SETTLEMENT OF ESTATES.—Of interest to all is the subject of the administration and settlement of estates in the State of California. Under this head will be shown the various steps to be taken in the appointment of executors or administrators, the management of the property of any estate, the selling of property under orders of the court, the rights of heirs and legatees, and the final settlement and distribution.

Section 1194.—EXECUTORS AND ADMINISTRATORS.—An executor is appointed where there is a will, and is either appointed by the court or named in the will.

An administrator is appointed by the court where there is no will.

Authority to an executor is given by an appointment of the Superior Court, and called Letters Testamentary.

Authority to an administrator is given by the same court, and called Letters of Administration.

Section 1195.—WHERE LETTERS WILL BE GRANTED.—Letters testamentary to an executor, or letters of administration to an administrator, must be granted: (1) in the county of which deceased was a resident at the time of his death, no matter where he died; or, (2) in the county in which he died, leaving property in the county, and not being a resident of the state; or, (3) in the county in which any part of his estate may be, when he dies out of this state and was not a resident here at the time of his death; or, (4) in the county in which any part of

the estate may be, the decedent not being a resident of the State, and not leaving estate in the county in which he died; or, (5) in all other cases, in the county where application for letters is first made.

When the estate of the decedent is in more than one county, he having died out of the state, and not having been a resident thereof at the time of his death, or being such non-resident, and dying within the state, and not leaving estate in the county where he died, the Superior Court of that county in which application is first made for letters testamentary or of administration has exclusive jurisdiction of the settlement of the estate.

Code of Civil Procedure, Section 1294, 1295.

Section 1196.—**PROOF OF WILL.**—Any person having a will in his possession must produce and deliver it to the Superior Court, or the executor named in the will, within thirty days after he receives information that the maker is dead; and if he fails to do this he will be responsible for all damages sustained by any one thereby.

Code of Civil Procedure, Section 1298.

Section 1197.—**WHO MAY PETITION FOR PROBATE OF WILL.**—Any executor, devisee, or legatee named in any will, or any other person interested in the estate, may, at any time after the death of the testator, petition the Superior Court to have the will proved.

Code of Civil Procedure, Section 1299.

Section 1198.—**WHEN EXECUTOR FORFEITS RIGHT TO LETTERS.**—If the person named in a will as executor willfully fails, for thirty days after he has knowledge of the death of the testator and that he is named as executor, to petition the proper court for the probate of the will, he will forfeit his rights as executor under the will.

Code of Civil Procedure, Section 1301.

Section 1199.—**EXECUTOR MAY DECLINE TO ACT.**—An executor named in a will may decline to act, by filing a

written notice that he renounces his appointment and declines to act as such, at the same time that he files the will.

Section 1200.—PROOF OF WILL.—When a will is presented for probate, the Superior Court will hear the proofs and issue a certificate of probate. The persons who signed the will as witnesses are examined as to their knowledge of its execution, and to show that it is really the will of the testator.

When one of the witnesses to a will is examined, and the others are dead or insane, or their residence unknown, other testimony, of the handwriting of the testator, and other circumstances, will be taken sufficient to prove that the instrument produced is really the last will and testament of the deceased.

If all the witnesses to the will are dead, or insane, or not residing in the county, the court will allow the will to be proved by other evidence—the handwriting of the testator, the surrounding circumstances, the handwriting of the subscribing witnesses, etc.

Code of Civil Procedure, Section 1315.

When a will is presented which is all in the handwriting of the testator, an olographic will, it will be proved by the testimony of persons who know his handwriting.

Section 1201.—RECORDING WILL.—The will and a certificate of the proof thereof must be filed and recorded by the clerk of the court.

Code of Civil Procedure, Section 1318.

Section 1202.—PROOF OF LOST OR DESTROYED WILL.—The Superior Court has power to take proof of a will, although the paper itself be lost or destroyed. But no will can be proved as a lost or destroyed will, unless the proof shows that the will was in existence at the time

of the death of the testator, or was fraudulently or by public calamity destroyed in his life-time; provided, if the testator be committed to any state hospital for the insane, and after such commitment his will is destroyed by public calamity, and the testator is never restored to competency, then after his death the will may be probated as though it were in existence at the time of his death. The provisions of a lost or destroyed will must be clearly and distinctly proved by at least two credible witnesses.

Section 1203.—PROOF OF FOREIGN WILL.—Wills probated in any other state or territory of the United States, or in any foreign country or state, are admitted to probate in this state on the production of a copy and the original record of probate in another country.

Section 1204.—LETTERS TESTAMENTARY.—After probate of a will, letters testamentary will be granted to the persons therein named as executors. If there are two or more executors named in the will, and some decline to act, letters will be granted to those who remain.

Any person interested in a will may file objections in writing to the granting of letters testamentary to any of the persons named as executors, and the objections will be heard and determined by the court.

If the executor named in the will be a minor or absent from the state, letters will be granted to some other person, who will hold the trust until the executor named in the will becomes of age or returns to the state. If two executors are named in the will, and one of them is a minor or absent from the state, the one who can qualify will act as executor alone until such time as the other becomes of age or returns to the state. The latter will then have the right to act as joint executor.

Code of Civil Procedure, Sections 1349, 1354, 1355.



Section 1205.—REVOCATION OF LETTERS.—If an executor or administrator becomes of unsound mind, or is convicted of felony or infamous crime, or becomes a habitual drunkard, or mismanages or wastes the estate, he will be removed by the Superior Court and another will be appointed in his place.

Section 1206.—MARRIED WOMAN OR CORPORATION MAY ACT.—A married woman may act as executrix of a will, or as administratrix of an estate.

A corporation may act as executor or administrator, if authorized by its articles of incorporation so to do.

Code of Civil Procedure, Sections 1348, 1350, 1352.

Section 1207.—LETTERS OF ADMINISTRATION.—If a person dies without making a will, the Superior Court will grant letters of administration of his estate. If a person dies leaving a will, but the will does not name any executor, the court will appoint an administrator, called an “administrator with the will annexed,” who will have power to carry out the provisions of the will in the same manner as he would if named in the will.

Section 1208.—WHO ARE ENTITLED TO LETTERS OF ADMINISTRATION.—The persons entitled to letters of administration are as follows:

- (1) The surviving husband or wife, or some competent person whom he or she may request to have appointed;
- (2) The children;
- (3) The father and mother;
- (4) The brothers and sisters;
- (5) The grandchildren;
- (6) The next of kin entitled to share in the distribution of the estate;
- (7) The public administrator;

- (8) The creditors;
- (9) Any person legally competent.

If the deceased was a member of a partnership at the time of his death, the surviving member must in no case be appointed administrator of the estate. This section shall apply to relatives of the deceased spouse of decedent, when entitled to succeed to some portion of the estate.

Act of the Legislature, approved April 15, 1919;  
in effect July 22, 1919.

Section 1209.—WHO ARE INCOMPETENT TO ACT AS EXECUTOR OR ADMINISTRATOR.—A person may be entitled to letters of administration, as provided in the preceding section, and at the same time be incompetent for personal reasons. For the law provides that in the following cases the persons otherwise entitled must not be appointed: (1) When the person is under the age of majority; or, (2) has been convicted of an infamous crime; or, (3) when he is adjudged by the court incompetent to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity.

Code of Civil Procedure, Sections 1350, 1369.

Section 1210.—OATH OF EXECUTOR OR ADMINISTRATOR. The executor or administrator must take and subscribe an oath, that he will perform, according to law, the duties of his trust. This oath is in writing and is recorded by the clerk of the court with the letters of administration.

Code of Civil Procedure, Section 1387.

Section 1211.—BOND OF EXECUTOR OR ADMINISTRATOR. Executors or administrators in the state of California must give a bond, for the faithful discharge of their duties, in an amount equal to twice the value of the personal property belonging to the estate, and twice the probable value of the rents, profits, and issues of the real

property. The court ascertains these values by examining on oath the party applying for letters, or any other person. The bond must be signed by two or more sureties, to be approved by the judge of the court.

Code of Civil Procedure, Section 1388.

An additional bond must be given whenever the sale of any real estate is to be made by order of the court; but no additional bond is necessary when it appears that the amount of the bond already given is twice the value of the personal property remaining in or that may come into the possession of the executor or administrator (including the annual rents, profits, and issues of real estate), and twice the probable amount to be realized on the sale of the real estate ordered to be sold.

Code of Civil Procedure, Section 1389.

Section 1212.—SEPARATE BONDS.—When two or more persons are appointed executors or administrators, the court must require and take a separate bond from each of them.

Code of Civil Procedure, Section 1391.

Section 1213.—WHEN EXECUTOR MAY ACT WITHOUT BONDS.—A will may expressly provide that the executor named in it shall act without giving bonds. Where a will does so provide, the executor will have power to administer the estate, including the sale of property, without giving any bonds whatever. If the estate is not managed properly, however, the court has power to demand a bond of the executor, even where the will declares that no bond shall be given. It is the duty of the court, no matter what the provisions of the will may be, to see that the estate is properly managed, without waste or unnecessary or wilful losses.

Code of Civil Procedure, Section 1396.

Section 1214.—SPECIAL ADMINISTRATOR.—When there is delay in application for or the granting of letters to an executor or administrator, or when no sufficient bond is filed, or when an executor or administrator dies or is suspended or removed, the Court may appoint a special administrator, to act for the time being, and whose duty it shall be to take charge of and preserve the estate until such time as a regular executor or administrator shall be appointed and qualified to act. The special administrator must give a bond in the same manner as other administrators.

Code of Civil Procedure, Section 1411.

Section 1215.—RELEASE OF BONDSMEN.—The bondsmen of an executor or administrator may be released by the court. When a surety of any executor or administrator desires to be released from the bond, and from future responsibility, he must make an application therefor to the Superior Court. The court will then require the executor or administrator to appear and give a bond with new sureties, and if he neglects to do so his letters will be revoked, and a new executor or administrator appointed. If new sureties are given to the satisfaction of the judge, the surety who applied for release will not be liable on the bond for any subsequent act, default, or misconduct of the executor or administrator.

Code of Civil Procedure, Sections 1403, 1404, 1405.

Section 1216.—RESIGNATION OF EXECUTOR OR ADMINISTRATOR.—An executor or administrator may resign if he wishes to do so. He may do this by filing in the Superior Court a written notice that he resigns his appointment. But, before his resignation can be accepted by the court he must file his accounts and have them allowed and settled by the court. The court can then make an order allowing and accepting the resignation.



If there are a number of executors or administrators, and one of them resigns, it will be the duty of those who remain to administer and settle up the estate.

Code of Civil Procedure, Section 1427.

Section 1217.—**SUIT AGAINST BONDSMEN.**—If the letters of an executor or administrator are revoked, or if he resigns or dies, and it is discovered that he has been faithless to his trust, any person injured by his bad conduct may bring a suit against his bondsmen to make good the losses sustained.

Section 1218.—**INVENTORY AND APPRAISEMENT.**—As soon as an executor or administrator has qualified, he is entitled to the immediate possession of the real estate and personal property of the deceased. He may receive the rents and profits of the real estate, until the estate is settled. And, as he has possession and charge of the estate, the law requires him to show to the court what property the estate consists of, and its location and condition. This he does by having an inventory and appraisement made, which is filed with the court. The inventory is made by the executor or administrator, under oath, containing a true statement of the real and personal estate of the deceased which has come to his possession or knowledge, and must be made and filed within three months after his appointment. Attached to the inventory must be an appraisement of the value of the property.

To make the appraisement, the court, or a judge thereof, must appoint three disinterested persons, one of whom must be one of the inheritance tax appraisers provided for by law (any two of which appraisers may act); provided, that the court may, in its discretion, appoint said inheritance tax appraiser as sole appraiser to appraise said estate.

Said appraisers are entitled to receive a reasonable compensation for their services, not to exceed five dollars per day, together with his actual and necessary expenses, to be allowed by the court or judge.

The appraisers or appraiser must, with the inventory, file a verified account of their or his services and disbursements.

If any part of the estate is in any other county than that in which letters issued, an appraiser or appraisers thereof may in the same manner as above provided, be appointed, either by the court or judge having jurisdiction of the estate, or by the court or judge of such other county, on request of the court or judge having jurisdiction. No clerk or deputy, nor any person related by consanguinity or affinity to or connected by marriage with, or being a partner or employee of the judge of the court, shall be appointed or shall be competent to act as appraiser in any estate, or matter or proceeding pending before said judge or in said court.

Act of the Legislature, approved May 10, 1917;  
in effect July 27, 1917.

Section 1219.—WHEN ADDITIONAL INVENTORY REQUIRED.—Whenever property not mentioned in the first inventory comes to the possession or knowledge of the executor or administrator, he must make and file another inventory and appraisement covering such property.

Code of Civil Procedure, Sections 1443, 1446,  
1451.

Section 1220.—WHEN NO APPRAISEMENT REQUIRED.—If the whole estate consists of money, there need not be an appraisement, but an inventory must be made and returned by the executor or administrator, as in other cases.

Act of the Legislature, approved April 21, 1909.

Section 1221.—**MONEY IN BANK.**—The surviving husband or wife or the guardian of the estate of any insane or incompetent husband or wife, of any deceased person, or if no husband or wife is living, then the children, or the guardian of the estates of any minor or insane or incompetent children of said deceased, or, if no children are living, then the father or mother or guardian of the estate of any insane or incompetent father or mother of such decedent, and if neither the father nor mother is living, then the brothers and sisters or the guardian of the estates of any minor or insane or incompetent brothers and sisters of such decedent, may, without procuring letters of administration, collect of any bank any sum which said deceased may have left on deposit in such bank at the time of his or her death; *provided*, such deposits shall not exceed the sum of one thousand dollars.

(a) *Banks Authorized to Pay.*—Any bank, upon receiving an affidavit stating that said depositor is dead, and that affiant is the surviving husband or wife or the guardian of the estate of an insane or incompetent surviving husband or wife, as the case may be, of said decedent, or stating that decedent left no husband or wife, and that affiant is the child, or that affiants are the children, or the guardians of the estates of the minor, insane or incompetent children, as the case may be, of said decedent, or stating that decedent left neither husband, wife nor children, and that affiant is the father or mother, or the guardian of the estate of the insane or incompetent father or mother, as the case may be, of said decedent, or stating that the decedent left neither husband, wife, children, father nor mother, and that affiants are the brothers and sisters, or the guardians of the estates of the minor, insane or incompetent brothers and sisters, as the case may be, of said decedent, and that the whole amount that said decedent left on deposit in any and all banks of deposit in this state, does not exceed the sum of one thousand dollars, may pay to said affiant or

affiants any deposit of said decedent, if the same does not exceed the sum of one thousand dollars, and the receipt of such affiant or affiants, is sufficient acquittance therefor.

Act of the Legislature, approved May 18, 1915;  
in effect August 8, 1915.

Section 1222.—PROBATE HOMESTEAD AND FAMILY ALLOWANCE.—The court will set aside a homestead for the use of the widow and children, whether there was a homestead during the life of the decedent or not. This homestead will be set aside out of the community property, if there be any, or out of the separate property of the deceased, if there is no community property. The homestead will be exempt from all claims against the estate, whether individual debts of the deceased, or community debts. The homestead is for the use and support of the widow, child, or children, of the deceased, and is not an asset of the estate for the payment of debts.

When a homestead is set apart to the use of the family, the property, with one exception stated below, is the property of the surviving widow, if there is no minor child. If the decedent left also a minor child or children, the one half of such homestead belongs to the widow, and the remainder to the child, or in equal shares to the children, if there are more than one. If there is no wife surviving, the whole property belongs to the minor child or children. If the property set apart is a homestead selected from the separate property of the decedent, the court can set it apart only for a limited period, and, subject to such homestead right, the title vests in the heirs of the deceased or devisees.

Act of the Legislature, approved February 16,  
1911.

(a) *Setting Off of Recorded Homestead.*—If the homestead selected and recorded prior to the death of the decedent be returned in the inventory appraised at not



exceeding five thousand dollars in value, or was previously appraised, and such appraised value did not exceed that sum, the superior court must, by order, set it off to the persons in whom title is vested by the law. If there be subsisting liens or encumbrances on the homestead, the claims secured thereby must be presented and allowed as other claims against the estate. If the funds of the estate be adequate to pay all claims against the estate, the claims so secured must be paid out of such funds. If the funds of the estate be not sufficient for that purpose, the claims so secured shall be paid proportionately with other claims allowed, and the liens or encumbrances on the homestead shall only be enforced against the homestead for any deficiency remaining after such payment; *provided*, that it shall be the duty of any executor or administrator, within sixty days after the first publication of notice to creditors, to notify in writing the record holder of any such lien or encumbrance upon real property subject to a declaration of homestead of the death of the testator or intestate, and unless so notified, the rights of the holder of such lien or encumbrance shall not be affected by his failure to present such claim as hereinabove required.

Act of the Legislature, approved May 21, 1917;  
in effect July 27, 1917.

Section 1223.—EXEMPT PROPERTY.—In addition to the homestead, the law provides that the court must set apart for the use of the family all the property of the estate which is by law exempt from execution.

Section 1224.—EXTRA ALLOWANCE.—If the amount set apart be insufficient for the support of the widow and minor children, the court will make such further reasonable allowance out of the estate as shall be necessary for the maintenance of the family, according to their circumstances, during the progress of the settlement of the

estate. Any such allowance made by the court must be paid by the executor or administrator in preference to all other charges, except funeral charges, and expenses of administration; and any such allowance, whenever made, may, in the discretion of the court, take effect from the death of the decedent.

Code of Civil Procedure, Sections 1465, 1466, 1467, 1468.

Section 1225.—ADMINISTRATION WHEN ESTATE DOES NOT EXCEED FIFTEEN HUNDRED DOLLARS.—If it appears from the inventory that the value of the whole estate does not exceed the sum of fifteen hundred dollars, over and above liens and incumbrances existing at the date of the death of the deceased, the court must make an order assigning to the widow of the deceased, or if there be no widow then to the minor children, the whole of the estate. And the title to the property will vest absolutely in such widow or minor children, after the payment of the expenses of the last illness of the deceased, funeral charges, and expenses of administration. The property will still be subject, however, to whatever mortgages, liens, or incumbrances there may have been upon it at the time of the death of the deceased. After property worth not more than fifteen hundred dollars is assigned by the court as above stated, there can be no further proceedings in the administration, unless other property is afterwards discovered.

Act of the Legislature, approved April 25, 1917; in effect July 27, 1917.

Section 1226.—CLAIMS AGAINST THE ESTATE.—After property has been appropriated from the estate for the support of the widow or minor children, as provided by law, the claims of creditors are to be next considered.

Section 1227.—NOTICE TO CREDITORS.—Every executor or administrator must, immediately after his letters are issued, cause to be published in some newspaper of the

county, if there be one, if not, then in such newspaper as may be designated by the judge or court, a notice to the creditors of the decedent, requiring all persons having claims against said decedent to file them, with the necessary vouchers, in the office of the clerk of the court from which the letters were issued, or to exhibit them, with the necessary vouchers, to the executor or administrator, at the place of his residence or business to be specified in the notice; *provided*, said residence or place of business shall be in the county in which said proceeding is had. Such notice must be published not less than once a week for four weeks. In case such executor or administrator resigns, or is removed, before the time expressed in the notice, his successor must give notice only for the unexpired time allowed for such filing or presentation. The notice must fix the time on or before which claims must be filed or presented.

Act of the Legislature, approved May 3, 1919;  
in effect July 22, 1919.

Section 1228.—CLAIMS BARRED IF NOT PRESENTED IN TIME.—All claims arising upon contracts, whether the same be due, not due, or contingent, and all claims for funeral expenses and expenses of the last sickness, must be presented to the executor or administrator within the time limited in the notice to creditors, and any claim not so presented is barred forever. But, when it is made to appear to the satisfaction of the court by the affidavit of the creditor, that the creditor was out of the State when the notice was published, the claim may be presented at any time before a decree of distribution is entered.

Section 1229.—CLAIMS MUST BE VERIFIED.—Every claim presented to the administrator or executor must be sworn to by the claimant or some one on his behalf, who must make affidavit that the amount is justly due, that no payments have been made thereon which are not

credited, and that there are no offsets to the claim within the knowledge of the affiant. The oath may be taken before any officer authorized to administer oaths. The executor or administrator may also require satisfactory vouchers to be produced in support of the claim.

Section 1230.—ALLOWANCE AND REJECTION OF CLAIMS. When a claim has been presented to the executor or administrator, he must indorse thereon his allowance or rejection, with the day and date. If he allows the claim, it must be presented to the judge of the court, who must in the same manner indorse on it his allowance or rejection.

If the claim be presented to the executor or administrator before the expiration of the time limited for the presentation of claims, it will be presented in time, though acted upon by the executor or administrator, and by the judge, after the expiration of such time.

Every claim which has been allowed by the executor or administrator and the judge must be filed in the court, within thirty days thereafter, and will then rank among the acknowledged debts of the estate, to be paid in due course of administration.

Section 1231.—SUIT ON REJECTED CLAIM.—When a claim is rejected either by the executor or administrator, or a judge of the Superior Court, written notice of such rejection shall be given by the executor or administrator to the holder of such claim or to the person filing or presenting the same, and the holder must bring suit in the proper court against the executor or administrator within three months after the date of service of such notice if the claim be then due or within two months after it becomes due, otherwise the claim shall be forever barred. If the residence of the claimant is not known, and the same shall be made to appear to the satisfaction of the



court, the court shall by its order require the notice to be served on the claimant by filing with the clerk.

Act of the Legislature, approved May 3, 1919;  
in effect July 22, 1919.

Section 1232.—CLAIM WHEN SUIT PENDING.—If a suit is pending against a person at the time of his death, the claim must be presented to the administrator or executor, the same as if no suit had been commenced. If the claim is not so presented, no recovery can be had in the suit.

Section 1233.—PAYMENT OF JUDGMENTS.—When any judgment has been rendered against a person in his lifetime, no execution can be issued on the judgment after his death, but it must be presented to the executor or administrator in the same manner as any other claim; and, if justly due and unsatisfied, it must be paid in due course of administration.

Section 1234.—ALLOWANCE OF CLAIM IN PART.—Whenever any claim is presented to an executor or administrator or to a judge, and he is willing to allow the claim in part, he must state in his indorsement the amount he is willing to allow. If the creditor refuses to accept the amount allowed in satisfaction of his claim, and sues upon it, he will not be allowed any costs unless he recovers a greater amount.

Section 1235.—STATUTE OF LIMITATIONS.—No claim can be allowed by the executor or administrator, or by a judge of the Superior Court, which is barred by the statute of limitations.

No claim against any estate, which has been presented and allowed, is affected by the statute of limitations pending the proceedings for the settlement of the estate.

Section 1236.—CLAIM OF EXECUTOR OR ADMINISTRATOR.—If the executor or administrator is himself a creditor, his claim, duly authenticated by affidavit, must be presented for allowance or rejection to the judge of the court. The

judge may allow or reject the claim. Its allowance by the judge is sufficient evidence of its correctness. If the claim of an executor or administrator is rejected by the judge, he may sue the estate, and summons in the suit can be served upon the judge.

Section 1237.—FAILURE TO PRESENT MORTGAGE CLAIM. If a mortgagee fails to present his claim against the estate to the executor or administrator, within the time required by law, he will not altogether lose his debt. He may still sue upon the mortgage, because it was a lien upon the property of the deceased during his lifetime. But, not having presented his claim as required by law, he must look only to the property of the estate covered by his mortgage for the collection of the amount due him. He will get it all, if the property will sell for enough to pay it. But if the money cannot be got out of the mortgaged property, by failure to present the mortgage claim he loses the right to have other property of the estate applied to the payment of the deficiency. Where a mortgage claim is not presented against the estate, the debt must be collected out of the mortgaged property, or not at all; and no attorney fees can be recovered upon such a claim not presented, even though the mortgage may have provided for attorney fees.

Code of Civil Procedure, Sections 1490, 1491, 1493, 1494, 1496, 1497, 1498, 1499, 1500, 1502, 1503, 1505.

Section 1238.—ESTATE CHARGEABLE WITH DEBTS.—All the property of a decedent shall be chargeable with the payment of the debts of the deceased, the expenses of administration, and the allowance to the family, except as otherwise provided. And the said property, personal and real, may be sold. There shall be no priority as between personal and real property for the above purposes.

**Section 1239.—SALE OF PROPERTY TO PAY DEBTS.**—The executor or administrator may sell any property of the estate of a decedent without order of court, and at either public or private sale, as the executor or administrator may determine; but no sale of such property is valid unless the same be under oath reported to and confirmed by the court, and the title to the property does not pass until such sale be confirmed by the court.

(a) *Perishable and Depreciating Property to Be Sold.* At any time after receiving letters, the executor, administrator, or special administrator may sell perishable and other personal property likely to depreciate in value, or which will incur loss or expense by being kept, and so much other personal property as may be necessary to pay the allowance made to the family of the decedent. The executor, administrator, or special administrator is responsible for the property, unless, after making a sworn return, and on a proper showing, the court shall approve the sale.

(b) *Selling Personal Property.*—If claims against the estate have been allowed, and a sale of property is necessary for their payment, or for the expenses of administration, or for the payment of legacies, the executor or administrator may sell so much of the personal property as may be necessary therefor. He may also make a sale from time to time, so long as any personal property remains in his hands, and sale thereof is necessary. If it appear for the best interests of the estate, he may, at any time after filing the inventory, in like manner, and after giving notice by publication for two weeks in a newspaper of general circulation, printed and published in the county, sell the whole of the personal property belonging to the estate, whether necessary to pay debts or not; *provided*, that the court may, by order, shorten the time of notice to like publication for one week.

(c) *Order of Sales.*—In making orders and sales for the payment of debts or family allowance, such articles as are not necessary for the support and subsistence of

the family of the deceased, or are not specially bequeathed, must be first sold.

(d) *When Executor or Administrator May Sell Property.*—When a sale of property of the estate is necessary to pay the allowance of the family, or the debts outstanding against the decedent, or the debts, expenses, or charges of administration, or legacies; or when it is for the advantage, benefit, and best interests of the estate, and those interested therein, that the real estate, or some part thereof, be sold, the executor or administrator may sell any real as well as personal property of the estate.

(e) *Interested Persons May Apply for Order of Sale.* If the executor or administrator neglects or refuses to sell the property of the estate when it is necessary or when it is for the advantage, benefit and best interests of the estate and those interested therein, that the real estate or some portion thereof be sold, any person interested may make application to the court, that the executor or administrator be required to sell, and notice of such application must be given to the executor or administrator before the hearing.

(f) *Posting of Public Auction Sale Notices.*—When a sale is to be made at public auction, notice of the time and place of sale must be posted in three of the most public places in the county in which the land is situated, and published in a newspaper, if there be one printed in the same county, but if none, then in such paper as the court may direct, for two weeks successively next before the sale; *provided, however*, that when it appears from the inventory and appraisement that the value of the whole estate does not exceed five hundred dollars the court, or a judge thereof, may in his discretion dispense with the publication in a newspaper and order notices be posted. The lands and tenements to be sold must be described with common certainty in the notice.

(g) *Private Sale of Real Estate.*—When a sale of real estate is to be made at private sale, notice of the



same must be posted up in three of the most public places in the county in which the land is situated, and published in a newspaper, if there be one printed in the same county, if none, then in such paper as the court or judge may direct, for two weeks successively next before the day on or after which the sale is to be made, in which the lands and tenements to be sold must be described with common certainty. The notice must state a day on or after which the sale will be made, and a place where offers or bids will be received. The day last referred to must be at least fifteen days from the first publication of notice; and the sale must not be made before that day, but must be made within six months thereafter. The bids or offers must be in writing and may be left at the place designated in the notice, or delivered to the executor or administrator personally, or may be filed in the office of the clerk of the court to which the return of sale must be made, at any time after the first publication of the notice and before the making of the sale. If it be shown that it will be for the best interests of the estate the court or judge may, by an order, shorten the time of notice, which shall not, however, be less than one week, and may provide that the sale may be made on or after a day less than fifteen but not less than eight days from the first publication of the notice, in which case the notice of sale and the sale may be made to correspond with such order; *provided, however*, that when it appears from the inventory and appraisement that the value of the whole estate does not exceed five hundred dollars the court, or a judge thereof, may in his discretion dispense with the publication in a newspaper and order notices be posted. The lands and tenements to be sold must be described with common certainty in the notice.

The executor or administrator, after making any sale of real estate, must make a return of his proceedings to the court, which must be filed in the office of the clerk at any time subsequent to the sale. A hearing upon

the return of the proceedings may be asked for in the return or by petition subsequently, and thereupon the clerk must fix the day for the hearing, of which notice of at least ten days must be given by the clerk, by notices posted in three public places in the county or by publication in a newspaper, and must briefly indicate the land sold, and must refer to the return for further particulars. Upon the hearing the court must examine into the necessity for the sale, or the advantage, benefit and interest of the estate in having the sale made, and must examine the return and witnesses in relation to the sale, and if good reason does not exist for such sale, or if the proceedings for the sale were unfair or the sum bid disproportionate to the value and it appears that a sum exceeding such bid at least ten per cent exclusive of the expenses of a new sale may be obtained, the court may vacate the sale and direct another to be had, of which notice must be given and the sale in all respects conducted as if no previous sale had taken place. If an offer of ten per cent more in amount than that named in the return be made to the court in writing, by a responsible person, it is in the discretion of the court to accept such offer and confirm the sale to such person or to order a new sale.

(h) *Order of Confirmation of Sale.*—If it appears to the court that there is reason for a sale and that the sale was legally made and fairly conducted, and that the sum bid was not disproportionate to the value of the property sold, and that a greater sum cannot be obtained, or if the increased bid be made and accepted by the court, the court must make an order confirming the sale, and directing conveyances to be executed. The sale, from that time, is confirmed and valid, and a certified copy of the order confirming it and directing conveyances to be executed must be recorded in the office of the recorder of the county in which the land sold is situated. If, after the confirmation, the purchaser neglects or refuses to comply with the terms of the sale, the court may, on

motion of the executor or administrator, and after notice to the purchaser, order a resale to be made of the property. If the amount realized on such resale does not cover the bid and the expenses of the previous sale, such purchaser is liable for the deficiency to the estate.

(i) *Conveyances*.—Conveyances must thereupon be executed to the purchaser by the executor or administrator, and they must refer to the order of the court confirming the sale of the property of the estate, and directing conveyances thereof to be executed, and to the record of the order of confirmation in the office of the county recorder, either by the date of such recording, or by the date, volume, and page of the record, and such reference shall have the same effect as if the orders were at large inserted in the conveyance. Conveyances so made convey all the right, title, interest, and estate of the decedent, in the premises, at the time of his death; if prior to the sale, by operation of law or otherwise, the estate has acquired any right, title, or interest in the premises, other than or in addition to that of the decedent at the time of his death, such right, title, or interest also passes by such conveyances.

(j) *Commissions for Sales of Real Estate*.—Any executor or administrator may enter into a contract with any bona fide real estate agent to secure a purchaser for any real property belonging to an estate, which contract shall provide for payment to such agent out of the proceeds of sale to any purchaser secured by him of a commission, the amount of which must be fixed and allowed by the court upon confirmation of the sale. If a sale to a purchaser obtained by such agent is returned to the court for confirmation and said sale be confirmed to such purchaser, such contract shall be binding and valid as against the estate for the amount so fixed and allowed by the court.

By the execution of any such contract no personal liability shall attach to the executor or administrator,

and no liability of any kind shall be incurred by the estate unless an actual sale is made and confirmed.

(k) *Sale of Contracts for Purchase of Lands.*—If a decedent, at the time of his death, was possessed of a contract for the purchase of lands, his interest in such land and under such contract may be sold by his executor or administrator, in the same manner as if he had died seized of such land, and the same proceedings may be had for that purpose as are prescribed for the sale of lands of which he died seized.

(1) *Holder of Lien or Mortgage May Purchase Lands.*—At any sale of lands upon which there is a mortgage or lien, the holder thereof may become the purchaser, and his receipt for the amount due him from the proceeds of the sale is a payment pro tanto. If the amount for which he purchased the property is insufficient to defray the expenses and discharge his mortgage or lien, he must pay the court, or the clerk thereof an amount sufficient to pay such expenses.

Act of the Legislature, approved May 25, 1919;  
in effect July 25, 1919.

Section 1240.—*SALE UNDER A WILL.*—When property is directed by will to be sold, or authority is given in the will to sell property, the executor may sell any property of the estate without the order of the court, and either by public or private sale, and with or without notice; but the executor must make a return to the court of such sales, as in other cases; and if directions are made in the will as to the mode of selling, or the particular property to be sold, such directions must be observed. In either case no title passes unless the sale is confirmed by the court.

Code of Civil Procedure, Section 1561.

Section 1241.—*COMPENSATION OF EXECUTORS AND ADMINISTRATORS.*—When no compensation is provided by



the will, or the executor renounces all claim thereto, he must be allowed commissions upon the amount of estate accounted for by him, as follows: For the first thousand dollars, at the rate of seven per cent; for the next nine thousand dollars, at the rate of four per cent; for the next ten thousand dollars, at the rate of three per cent; for the next thirty thousand dollars, at the rate of two per cent; for the next fifty thousand dollars, at the rate of one per cent; and for all above one hundred thousand dollars, at the rate of one half of one per cent. If there are two or more executors the compensation shall be apportioned among them by the court according to the services actually rendered by them respectively. The same commissions shall be allowed to administrators. In all cases, such further allowance may be made as the court may deem just and reasonable for any extraordinary service, but the total amount of such extra allowance must not exceed one half the amount of commissions allowed by this section. Where the property of the estate is distributed in kind, and involves no labor beyond the custody and distribution of the same, the commission shall be computed on all the estate above the value of twenty thousand dollars, at one half of the rates fixed in this section. Public administrators shall receive the same compensation and allowances as are allowed in this title to other administrators. All contracts between an executor or administrator and an heir, devisee or legatee, for a higher compensation than that allowed by this section, shall be void.

Code of Civil Procedure, Section 1618.

Section 1242.—ATTORNEY FEES.—Executors and administrators must be allowed, for fees of their attorneys, for conducting the ordinary probate proceedings, the same amounts specified in the preceding sections as commissions for their own services.

In all cases, such further allowance may be made as the court may deem just and reasonable, for any extraor-

dinary service, such as sales or mortgages of real estate, contested or litigated claims against the estate, litigation in regard to the property of the estate, and such other litigation as it may become necessary for the executor or administrator to prosecute or defend.

Code of Civil Procedure, Section 1619.

Section 1243.—PAYMENT OF DEBTS BEARING INTEREST. If there be any debt of the decedent bearing interest, whether filed or not, or whether presented or not, the executor or administrator may, by order of the court, pay the amount then accumulated and unpaid, or any part thereof, at any time when there are sufficient funds properly applicable thereto, whether said claim be then due or not; and interest shall thereupon cease to accrue upon the amount so paid.

Code of Civil Procedure, Section 1513.

Section 1244.—WHEN CLAIMANT CANNOT BE FOUND.—Whenever any claim has been filed or presented and shall have been approved by the executor or administrator and by the judge, but the same has not been paid, and the estate is in all other respects ready to be closed, if it be made to appear to the satisfaction of the court or judge, by affidavit, or by testimony taken in open court, that the same cannot be, and has not been, paid because the claimant cannot be found, the court or judge shall make an order fixing the amount of said claim, with interest, if any, and directing the executor or administrator to deposit the amount with the county treasurer of the county in which the estate is being probated, who shall give a receipt for the same, and who shall be liable upon his official bond therefor. Such executor or administrator shall at once make the deposit in accordance with such order of court and shall forthwith proceed to close up and settle such estate. Upon the final settlement of his accounts, the receipt of such treasurer shall

be received as a proper voucher for the payment of such claim, and shall have the same force and effect as if executed by such claimant.

When the amount so deposited is not claimed within five years the court or judge, upon such showing by the affidavit of the county treasurer, must direct the same to be deposited in the state treasury for the benefit of such claimant, or his legal representative to be paid to him whenever, within five years after such deposit, proof to the satisfaction of the state controller and state treasurer is produced that he is entitled thereto. When so claimed, the evidence and the joint order of the controller and treasurer must be filed by the treasurer as his voucher, and the amount of the claim paid to the claimant, or his legal representative, on filing the proper receipt. If no one claims the amount, as herein provided, the claim devolves and escheats to the people of the State of California and shall be placed by the state treasurer to the credit of the school fund.

Code of Civil Procedure, Section 1514.

(a) *Form of Creditor's Claim.*—The following is a form of creditor's claim against the estate of a deceased person:

In the Superior Court of the.....County  
of....., State of California.

In the matter of the estate of John Smith, Deceased.

Los Angeles, Cal., ....., 19.....

Letters as Administrator in the estate of the said John Smith, deceased, having been granted to Martin Green, the undersigned, a creditor of said deceased, presents his claim against the estate of said deceased, with the necessary vouchers, to said Martin Green, Administrator, for approval, as follows, to-wit:

Estate of John Smith, Deceased.

To Samuel Brown, Dr.

.....  
(Here insert statement of demand.)  
.....

STATE OF CALIFORNIA, }  
COUNTY OF..... } ss.

Samuel Brown, whose foregoing claim is herewith presented to the Administrator of the estate of said deceased, being duly sworn, says, that the amount thereof, to-wit, the sum of.....Dollars is justly due to said claimant, that no payments have been made thereon which are not credited, and that there are no offsets to the same to the knowledge of the claimant and affiant.

Subscribed and sworn to before me this.....day of....., 19.....

.....  
Notary Public in and for said County and State.

Section 1245.—PARTIAL ALLOWANCE TO EXECUTOR, ADMINISTRATOR OR ATTORNEY.—At any time after one year from the admission of a will to probate, or the granting of letters of administration, any executor, or administrator, may, upon such notice to the other parties interested in the estate as the court shall by order require, apply to the court for an allowance to himself upon his commissions, and the court shall on the hearing of such application make an order allowing such executor or administrator such portion of his commissions as to the court shall seem proper, and the portion so allowed may be thereupon charged against the estate.

Any attorney who has rendered services to an executor or administrator may at any time during the administration, and upon such notice to the other parties interested in the estate as the court shall by order require, apply to the court for an allowance to himself of compensation therefor, and the court shall on the hearing of such application make an order requiring the executor or administrator to pay to such attorney out of the estate such compensation on account of services rendered by such attorney up to the date of such order as to the court



shall seem proper, and such payment shall be forthwith made.

Act of the Legislature, approved April 7, 1911.

Section 1246.—ACCOUNTS OF EXECUTORS AND ADMINISTRATORS.—When required by the court, either upon its own motion or upon the application of any person interested in the estate, the executor or administrator must render an account under oath, showing the amount of money received and expended by him, the amount of all claims presented against the estate, and the names of the claimants, and all other matters necessary to show the condition of its affairs. Objections may be made to the correctness of the account, by any person interested, which the court will hear and determine.

Code of Civil Procedure, Section 1622.

Section 1247.—PAYMENT OF DEBTS.—The debts of the estate must be paid in the following order:

1. Funeral expenses;
2. Expenses of the last sickness;
3. Debts having preference by the laws of the United States;
4. Judgments rendered against the decedent in his lifetime, and mortgages and other liens in the order of their date;
5. All other demands against the estate.

The preference given to a mortgage or lien only extends to the proceeds of the property subject to the mortgage or lien.

Code of Civil Procedure, Sections 1643, 1644.

Section 1248.—ERECTION OF MONUMENT.—Executors and administrators of the estates of deceased persons have authority to expend a reasonable sum out of the estate to erect a monument, or tombstone, suitable to mark the grave of the deceased.

Section 1249.—PARTIAL DISTRIBUTION OF ESTATE.—Where the time for filing or presenting claims has expired, and all claims that have been allowed have been paid, or are secured by a mortgage upon real estate sufficient to pay them, and the estate is not in a condition to be finally closed and distributed, the executor or administrator, or coexecutor or coadministrator, may present his petition to the court for ratable payment of the legacies, or ratable distribution of the estate to all the heirs, legatees, devisees, or their assignees, grantees or successors in interest. Notice of such application must be given to all persons interested in the estate, in the same manner that notice is required to be given of the settlement of the account of an executor or administrator. Any person interested in the estate may appear at the time named and resist the application. If at the hearing, it appears that the allegations in the petition of said executor, administrator, coexecutor, or coadministrator, are true, and the court is satisfied that no injury can result to the estate by granting the petition, the court must make an order directing the executor or executors, administrator or administrators, as the case may be, to deliver to the heirs, legatees, devisees, or to their assigns, grantees or successors in interest the whole portion of the estate to which they may be entitled, or only a part thereof, designating it. The costs of the proceedings under this section must be paid by the estate, excepting that in case a partition is necessary, the costs of such partition must be apportioned amongst the parties interested in such partition.

Act of the Legislature, approved May 17, 1917;  
in effect July 27, 1917.

Section 1250.—FINAL DISTRIBUTION OF ESTATE.—Upon the final settlement of the accounts of the executor or administrator, or at any subsequent time, upon the application of the executor or administrator, or of any heir,

legatee, devisee (or his assignee, grantee or successor in interest), the court must proceed to distribute the residue of the estate in the hands of the executor or administrator, if any, among the persons who by law are entitled thereto; and if the decedent has left a surviving child, or the issue of a deceased child, and any of them, before the close of the administration, have died while under age and not having been married, no administration on such deceased child's estate is necessary, but all the estate which such deceased child was entitled to by inheritance must, without administration, be distributed as provided by law. A statement of any receipts and disbursements of the executor or administrator, since the rendition of his final account, must be reported and filed at the time of making such distribution.

Act of the Legislature, approved April 24, 1911.

Section 1251.—SUCCESSION TO PROPERTY.—If a person dies, leaving a will, his property goes to the persons named therein as legatees.

Who may make a will, who may take by will, and what may be disposed of by will, has been discussed under the heading "Wills."

We now consider how the property of a person who dies, leaving no will, will descend upon his death, and to whom it will go in succession as his heirs at law.

The Code defines the term succession, as the coming in of another to take the property of one who dies without disposing of it by will. The property, both real and personal, of one who dies without disposing of it by will, passes to the heirs of the intestate, subject to the control of the probate court, and to the possession of any administrator appointed by the court for the purposes of administration. When a person dies without disposing of his property by will, it is succeeded to and must be distributed, subject to the payment of his debts, in the following manner:

1. If the decedent leaves a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband, or wife and child, or issue of such child. If the decedent leaves a surviving husband or wife, and more than one child living, or one child living and the lawful issue of one or more deceased children, one-third to the surviving husband or wife, and the remainder in equal shares to his children and to the lawful issue of any deceased child, by right of representation; but if there is no child of decedent living at his death, the remainder goes to all of his lineal descendants; and if all of the descendants are in the same degree of kindred to the decedent, they share equally, otherwise they take according to the right of representation. If the decedent leaves no surviving husband or wife, but leaves issue, the whole estate goes to such issue; and if such issue consists of more than one child living, or one child living and the lawful issue of one or more deceased children, then the estate goes in equal shares to the children living, or the child living and the issue of the deceased child or children by right of representation;

2. If the decedent leaves no issue, the estate goes one-half to the surviving husband or wife, and the other half to the decedent's father and mother in equal shares, and if either is dead the whole of said half goes to the other. If there is no father or mother, then one-half goes in equal shares to the brothers and sisters of decedent and to the children or grandchildren of any deceased brother or sister by right of representation. If the decedent leaves no issue nor husband nor wife, the estate must go to his father and mother in equal shares, or if either is dead then to the other;

3. If there is neither issue, husband, wife, father, nor mother, then in equal shares to the brothers and sisters of decedent and to the children or grandchildren



of any deceased brother or sister, by right of representation;

4. If the decedent leaves a surviving husband or wife, and neither issue, father, mother, brother, sister, nor the children nor grandchildren of a deceased brother or sister, the whole estate goes to the surviving husband or wife;

5. If the decedent leaves neither issue, husband, wife, father, mother, brother nor sister, the estate must go to the next of kin, in equal degree, excepting that, when there are two or more collateral kindred, in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor must be preferred to those claiming through an ancestor more remote;

6. If the decedent leaves several children, or one child and the issue of one or more children, and any such surviving child dies under age and not having been married, all the estate that came to the deceased child by inheritance from such decedent descends in equal shares to the other children of the same parent and to the issue of any other children who are dead, by right of representation;

7. If, at the death of such child, who dies under age, not having been married, all the other children of his parents are also dead, and any of them has left issue, the estate that came to such child by inheritance from his parent descends to the issue of all other children of the same parent; and if all the issue are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation;

8. If the deceased is a widow, or widower, and leaves no issue, and the estate, or any portion thereof, was common property of such decedent and his or her deceased spouse, while such spouse was living, such property goes in equal shares to the children of such deceased spouse and to the decedents of such children

by right of representation, and if none, then one-half of such common property goes to the father and mother of such decedent in equal shares, or to the survivor of them if either be dead, or if both be dead, then in equal shares to the brothers and sisters of such decedent and to the descendants of any deceased brother or sister by right of representation, and the other half goes to the father and mother of such deceased spouse in equal shares, or to the survivor of them if either be dead, or if both be dead, then in equal shares to the brothers and sisters of such deceased spouse and to the descendants of any deceased brother or sister by right of representation.

If the estate, or any portion thereof, was separate property of such deceased spouse, while living, and came to such decedent from such spouse by descent, devise, or bequest, such property goes in equal shares to the children of such spouse and to the descendants of any deceased child by right of representation, and if none, then to the father and mother of such spouse, in equal shares, or to the survivor of them if either be dead, or if both be dead, then in equal shares to the brothers and sisters of such spouse and to the descendants of any deceased brother or sister by right of representation.

9. If the decedent leaves no husband, wife, or kindred, and there are no heirs to take his estate or any portion thereof, under subdivision eight of this section, the same escheats to the state for the support of the common schools.

Act of the Legislature, in effect May 18, 1907.

Section 1252.—INHERITANCE OF HUSBAND AND WIFE FROM EACH OTHER.—The above provisions of this law, as to the inheritance of the husband and wife from each other, apply only to the separate property of the decedent.

Section 1253.—DISTRIBUTION OF COMMUNITY PROPERTY ON DEATH OF HUSBAND.—Upon the death of the husband, one-half of the community property goes to the surviving wife, and the other half is subject to the testamentary disposition of the husband, and in the absence of such disposition, goes to his descendants equally, if such descendants are in the same degree of kindred to the deceased, otherwise according to the right of representation; and in the absence of both such testamentary disposition and such descendants, is subject to distribution in the same manner as the separate property of the husband. In case of the dissolution of the community by the death of the husband, the entire community property is equally subject to his debts, the family allowance, and the charges and expenses of administration.

Section 1254.—DISTRIBUTION OF COMMUNITY PROPERTY ON DEATH OF WIFE.—Upon the death of the wife, the entire community property, without administration, belongs to the surviving husband, unless the wife has willed away her half. If any portion of the community property has been set apart for the wife by judicial decree, for her support and maintenance, this portion does not go to her husband upon her death, but may be willed away by her; and in the absence of her testamentary disposition, it will go to her heirs, exclusive of her husband.

Civil Code, Sections 1400, 1401, 1402.

Section 1255.—RIGHTS OF ILLEGITIMATE CHILD.—Every illegitimate child is an heir of the person who, in writing, signed in the presence of a competent witness, acknowledges himself to be the father of such child. An illegitimate child is in all cases the heir of his mother, whether the father acknowledges him or not. An illegitimate child cannot claim any part of the estate of any deceased children or other heirs of his father or mother, unless his parents marry, and his father after such mar-

riage acknowledges him and adopts him into his family.  
Civil Code, Section 1387.

Section 1256.—ADVANCEMENTS.—Any estate, real or personal, that may have been given by the decedent in his lifetime as an advancement to any child or other heir, is considered a part of the estate, so far as regards its division and distribution, and must be taken by the person receiving it toward his share of the estate. If the amount of the advancement exceeds the share of the heir, he will be excluded from any further portion in the division and distribution of the estate, but he will not be required to refund any part of his advancement. If the amount advanced be less than his share, he will be entitled to so much more as will give him his full share of the estate. All gifts and grants are deemed to have been made as an advancement, if expressed in the gift or grant to be so made, or if charged in writing by the deceased as an advancement, or acknowledged in writing as such by the child or other heir.

Civil Code, Sections 1395, 1396, 1397.

Section 1257.—DISCHARGE OF ADMINISTRATOR OF EXECUTOR.—When the estate has been fully administered upon, and it is shown, by the executor or administrator, by the production of satisfactory vouchers, that he has paid all sums of money due from him, and delivered up under order of the court all property of the estate to the persons entitled thereto, the court will make a decree discharging him from all liability to be incurred thereafter.

Section 1258.—CLAIMS PAID WITHOUT VOUCHERS.—On the settlement of his account the executor or administrator may be allowed any item of expenditure not exceeding twenty dollars, for which no voucher is produced, if such item be supported by his own uncontra-



licated oath positive to the fact of payment, specifying when, where, and to whom it was made; but such allowances in the whole must not exceed five hundred dollars against any one estate, provided, that, if it appears by the oath to the account and is proven by competent evidence, to the satisfaction of the court, that a voucher for any disbursement or disbursements whatsoever, has been lost or destroyed, and that it is impossible to obtain a duplicate thereof, and that such item or items were paid in good faith and for the best interests of the estate, and such item or items were legal charges against said estate, then the executor or administrator shall be allowed such item or items.

If, upon such settlement of accounts, it appears that debts against the deceased have been paid without affidavit and allowance prescribed by statute, and it shall be proven by competent evidence to the satisfaction of the court that such debts were justly due, were paid in good faith, that the amount paid was the true amount of such indebtedness over and above all payment or set-offs, and that the estate is solvent, it shall be the duty of the said court to allow the said sums so paid in the settlement of said accounts.

Act of the Legislature, approved April 5, 1911.

Section 1259.—DISTRIBUTION WHEN DECEDENT WAS NOT A RESIDENT OF THE STATE.—Upon application for distribution, after final settlement of the accounts of administration, if the decedent was a non-resident of this state, leaving a will which has been duly proved or allowed in the state of his residence, and an authenticated copy thereof has been admitted to probate in this state, or if the decedent died intestate, and an administrator has been duly appointed and qualified in the state of his residence, and it is necessary, in order that the estate, or any part thereof, may be distributed according to the will, or if the court is satisfied that it is for

the best interests of the estate, that the estate in this state should be delivered to the executor or administrator in the state or place of the decedent's residence, the court may order such delivery to be made, and, if necessary, order a sale of the real estate, and a like delivery of the proceeds. The delivery, in accordance with the order of the court, is a full discharge of the executor or administrator with the will annexed or administrator, in this state, in relation to all property embraced in such order, which, unless reversed on appeal, binds and concludes all parties in interest. Sales of real estate, ordered by virtue of this section, must be made in the same manner as other sales of real estate of decedents by order of the court.

Act of the Legislature, approved April 7, 1911.

Section 1260.—**INHERITANCE TAX LAW.**—A tax shall be and is hereby imposed upon the transfer of any property, real, personal or mixed, or of any interest therein or income therefrom, in trust or otherwise, to persons, institutions or corporations, not hereinafter exempted, to be paid to the treasurer of the proper county, as hereinafter directed, for the use of the state, in the following cases:

(1) *By Will of Resident.*—When the transfer is by will or by the intestate or homestead laws of this state, from any person dying seized or possessed of the property while a resident of the state, or by any probate homestead set apart from said property.

(2) *By Will of Non-resident.*—When the transfer is by will or intestate laws of property within this state and the decedent was a non-resident of the state at the time of his death.

(3) *Transfer Without Adequate Consideration.*—When the transfer is of property made by a resident, or by a non-resident when such non-resident's property is within this state, by deed, grant, bargain, sale, assign-

Section 1260, page 960, "Business Law for Business Men"—INHERITANCE TAX—On page 961, in line 8, of sub-division 4, change the words "within five years" so as to read "within two years."

(a) On page 963, strike out sub-divisions (e) and (f) and substitute the following: "Upon all in excess of \$500,000 twelve per centum of such excess."

On page 964, strike out sub-divisions (e) and (f) paragraph (2) and substitute the following: (c) "Upon all in excess of five hundred thousand dollars, eighteen per centum of such excess."

On page 964, strike out sub-divisions (d), (e) and (f), paragraph (3), and substitute the following: (d) "Upon all in excess of two hundred thousand dollars, twenty per centum of such excess."

On page 965, strike out sub-divisions (c), (d) and (e), paragraph (4), and substitute the following: (c) "Upon all in excess of one hundred thousand dollars, twenty per centum of such excess."

On page 965, under "Exemptions," in sub-division (1), add the following: **"Provided, however,** that such society, corporation, institution or association be organized or existing under the laws of this state or that the property transferred be limited for use within this state."

Act of the Legislature of California, approved June 3, 1921; in effect August 3, 1921.





ment or gift, made without valuable and adequate consideration in contemplation of the death of the grantor, vendor, assignor or donor, or intended to take effect in possession or enjoyment at or after such death. When any such person, institution or corporation becomes beneficially entitled in possession or expectancy to any property or the income therefrom, by any such transfer, whether made before or after the passage of this act.

(4) *Taxes to Be Lien Against Property.*—Such taxes shall be and remain a lien upon the property passed or transferred until paid, and the person to whom the property passes or is transferred, and all administrators, executors, and trustees of every estate so transferred or passed, shall be liable for any and all such taxes until the same shall have been paid; *provided*, that no such lien shall cease within five years from the date of the passage of this act. The tax so imposed shall be upon the market value of such property at the rates hereinafter prescribed and only upon the excess over the exemptions hereinafter granted; *provided*, that in determining the market value there shall be no deduction for any family allowance made out of said estate.

(5) *Exercise of Power of Appointment Deemed Transfer.*—Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment, when made, shall be deemed a transfer taxable under the provisions of this act, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power, and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or

failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

(a) *Rates of Tax.*—When the property or any beneficial interest therein so passed or transferred exceeds in value the exemption hereinafter specified and shall not exceed in value twenty-five thousand dollars, the tax hereby imposed shall be:

(1) *When Beneficiary Is Husband, Etc.*—Where the person or persons entitled to any beneficial interest in such property shall be the husband, wife, lineal issue, lineal ancestor of the decedent or any child adopted as such in conformity with the laws of this state, or any child to whom such decedent for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent; provided, however, such relationship began at or before the child's fifteenth birthday, and was continuous for said ten years thereafter, or any lineal issue of such adopted or mutually acknowledged child, at the rate of one per centum of the clear value of such interest in such property.

(2) *When Brother, Etc.*—When the person or persons entitled to any beneficial interest in such property shall be the brother or sister or a descendant of a brother or sister of the decedent, a wife or widow of a son, or the husband of a daughter of the decedent, at the rate of three per centum of the clear value of such interest in such property.

(3) *When Brother of Father, Etc.*—Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother or a descendant of a brother or sister of the father or mother of the decedent, at the rate of four per centum of the clear value of such interest in such property.

(4) *Other Degrees of Consanguinity*.—Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the decedent, or shall be a body politic or corporate, at the rate of five per centum of the clear value of such interest in such property.

(b) *Rates on Property in Excess of \$25,000*.—The rates on property in excess of \$25,000, applied to subdivisions (1), (2), (3) and (4) are as follows:

(a) Upon all in excess of twenty-five thousand dollars and up to fifty thousand dollars, two per centum of such excess.

(b) Upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, four per centum of such excess.

(c) Upon all in excess of one hundred thousand dollars and up to two hundred thousand dollars, seven per centum of such excess.

(d) Upon all in excess of two hundred thousand dollars and up to five hundred thousand dollars, ten per centum of such excess.

(e) Upon all in excess of five hundred thousand dollars and up to one million dollars, twelve per centum of such excess.

(f) Upon all in excess of one million dollars, fifteen per centum of such excess.

(2) When the market value of such property or interest passed or transferred to any of the persons mentioned in subdivision two exceeds twenty-five thousand dollars, the rates of tax upon such excess shall be as follows:

(a) Upon all in excess of twenty-five thousand dollars and up to fifty thousand dollars, six per centum of such excess.

(b) Upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, nine per centum of

such excess.

(c) Upon all in excess of one hundred thousand dollars and up to two hundred thousand dollars, twelve per centum of such excess.

(d) Upon all in excess of two hundred thousand dollars and up to five hundred thousand dollars, fifteen per centum of such excess.

(e) Upon all in excess of five hundred thousand dollars and up to one million dollars, twenty per centum of such excess.

(f) Upon all in excess of one million dollars, twenty-five per centum of such excess.

(3) When the market value of such property or interest passed or transferred to any of the persons mentioned in subdivision three exceeds twenty-five thousand dollars, the rates of tax upon such excess shall be as follows:

(a) Upon all in excess of twenty-five thousand dollars and up to fifty thousand dollars, eight per centum of such excess.

(b) Upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, ten per centum of such excess.

(c) Upon all in excess of one hundred thousand dollars and up to two hundred thousand dollars, fifteen per centum of such excess.

(d) Upon all in excess of two hundred thousand dollars and up to five hundred thousand dollars, twenty per centum of such excess.

(e) Upon all in excess of five hundred thousand dollars and up to one million dollars, twenty-five per centum of such excess.

(f) Upon all in excess of one million dollars, thirty per centum of such excess.

(4) When the market value of such property or interest passed or transferred to any of the persons mentioned in subdivision four exceeds twenty-five thousand



dollars, the rates of tax upon such excess shall be as follows:

(a) Upon all in excess of twenty-five thousand dollars and up to fifty thousand dollars, ten per centum of such excess.

(b) Upon all in excess of fifty thousand dollars and up to one hundred thousand dollars, fifteen per centum of such excess.

(c) Upon all in excess of one hundred thousand dollars and up to two hundred thousand dollars, twenty per centum of such excess.

(d) Upon all in excess of two hundred thousand dollars and up to five hundred thousand dollars, twenty-five per centum of such excess.

(e) Upon all in excess of five hundred thousand dollars, thirty per centum of such excess.

(c) *Exemptions.*—The following exemptions are allowed:

(1) All property transferred to societies, corporations, and institutions now or hereafter exempted by law from taxation, or to any public corporation, or to any society, corporation, institution, or association of persons engaged in or devoted to any charitable, benevolent, educational, public, or other like work (pecuniary profit not being its object or purpose), or to any person, society, corporation, institution, or association of persons in trust for or to be devoted to any charitable, benevolent, educational, or public purpose, by reason whereof any such person or corporation shall become beneficially entitled, in possession or expectancy, to any such property or to the income thereof, shall be exempt.

(2) Property of the clear value of twenty-four thousand dollars, transferred to the widow or to a minor child of the decedent, and of ten thousand dollars transferred to each of the other persons described in the first subdivision shall be exempt.

(3) Property of the clear value of two thousand dollars, transferred to each of the persons described in the second subdivision shall be exempt.

(4) Property of the clear value of one thousand dollars, transferred to each of the persons described in the third subdivision shall be exempt.

(5) Property of the clear value of five hundred dollars, transferred to each of the persons and corporations described in the fourth subdivision shall be exempt.

California Statutes of 1913, 1915.

(d) *When Taxes Are Due.*—All taxes imposed by this act are due and payable at the death of the decedent, and if the same are paid within eighteen months, no interest shall be charged and collected thereon, but if not so paid, interest at the rate of ten per centum per annum shall be charged and collected from the time said tax accrued; *provided*, that if said tax is paid within six months from the accruing thereof a discount of five per centum shall be allowed and deducted from said tax.

(e) *Executor to Deduct Tax From Property Before Delivery to Legatee.*—Any administrator, executor, or trustee having in charge or trust any legacy or property for distribution, subject to the said tax, shall deduct the tax therefrom, or if the legacy or other property be not money he shall collect the tax thereon, upon the market value thereof, from the legatee or person entitled to such property, and he shall not deliver, or be compelled to deliver, any specific legacy or property subject to tax to any person until he shall have collected the tax thereon; and whenever any such legacy shall be charged upon or payable out of real estate, the executor, administrator, or trustee shall collect said tax from the distributee thereof, and the same shall remain a charge on such real estate until paid; if, however, such legacy be given in money to any person for a limited period, the executor, administrator, or trustee shall retain the tax upon the

whole amount; but if it be not in money he shall make application to the superior court to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

California Statutes of 1913, 1915, 1917.

A. J. BLEDSOE, ATTORNEY-AT-LAW, Los Angeles, Cal.—  
Proof of Wills, Letters of Administration, Settlement of Estates. See title page of this book for office address of A. J. Bledsoe.

## PART XIII.

### AUTOMOBILE LAW OF CALIFORNIA

Section 1261.—AUTOMOBILE DEFINED.—The word “automobile” is compounded of other words taken from the Greek and Latin languages, and modernized in the French language. “Auto” is taken from the Greek, and means *self*. “Mobile” originates from the Latin *mobilis*, *movable*, and comes to us from the French. The two joined make the word “automobile,” resulting in the expression of something movable, to which we attach by implication the idea of a vehicle.

In the statutory law of California, the word “automobile” includes all vehicles excepting motorcycles.

Section 1262.—AUTOMOBILE ACT OF 1919.—The Legislature passed a law in 1919 regulating the use of motor vehicles in the State of California, the provisions of which are stated in the following sections. The law went into effect at midnight January 31, 1920.

Section 1263.—REGISTRATION OF AUTOMOBILES.—Every owner of a motor vehicle which shall be operated or driven upon the public highways shall, for each motor vehicle owned, except as herein otherwise expressly provided, cause to be filed, by mail, or otherwise, with the motor department an application for registration on a blank to be furnished by said department for that purpose, containing, in addition to such other particulars as may be required by said department, a statement of the name and postoffice address of the applicant and the



name and postoffice address of the legal owner, a description of such motor vehicle, including the name of the maker, the number, if any, affixed to the motor or engine by the maker, the character of the motive power, and the diameter of the cylinder bore and the number of cylinders; and with such application the applicant shall deposit the proper registration fee; *provided*, that for all the purposes of this act the horsepower of any motor vehicle, except electric or steam-driven vehicles, shall be determined by the formula commonly known as that of the association of licensed automobile manufacturers (A. L. A. M.) being as follows: Square the diameter of the cylinder in inches, multiply by the number of cylinders, and divide by two and five-tenths; *provided, further*, that for the purpose of this act the horsepower of any steam-driven motor vehicle shall be the horsepower rating fixed and advertised by the manufacturer thereof; *provided, further*, that in case the motor vehicle sought to be registered shall be a specially constructed or a reconstructed motor vehicle, that fact must be stated by the applicant in his application for registration and he shall furnish the department on demand such additional information relating to said motor vehicle as shall be satisfactory to the department before it may register such vehicle; *and provided, further*, that in case the motor vehicle sought to be registered shall be an imported motor vehicle, within the meaning of this act, that fact must be stated by the applicant in his application for registration, and he shall furnish the department on demand such additional information relating to said motor vehicle as shall be satisfactory to the department before it may register such vehicle, and in case such vehicle shall have been theretofore registered in any other state or country, the applicant shall with his original application for registration supply the department with full information relating to such former registration and shall surrender to the department any number

plates, seals, certificates of registration or other evidences of such former registration as may be in the applicant's possession or control.

(a) *Trailers*.—Every owner of a trailer or trailers which shall be drawn upon a public highway when any such trailer shall exceed one ton in weight shall cause to be filed by mail or otherwise, with the department, an application for registration on a blank to be furnished by said department for that purpose, containing in addition to such other particulars as may be required by said department, a statement of the name and postoffice address of the applicant, and with such application the applicant shall deposit the proper registration fee.

(b) *Notice of Change of Address*.—Whenever the owner of any motor vehicle shall after making application for registration of any motor vehicle move from the address named in such application or change his postoffice address he shall within ten days after such moving or change of address notify the department in writing of such change and of his new postoffice address. Failure to so notify the department shall constitute a misdemeanor.

(c) *The Registration*.—Upon the receipt by the department of an application for registration of a motor vehicle or trailer or trailers accompanied by the fee required, the department shall file such application and if satisfied that the applicant is entitled to registration of said vehicle or vehicles as the owner thereof, and if all fees theretofore payable to the department in connection with the registration, or any renewal thereof, of said vehicle or vehicles shall have been duly paid, shall alphabetically, and also numerically, register such motor vehicle or trailer or trailers with the name and postoffice of the owner, and of the legal owner, together with the facts stated in such application, in a book or on index cards to be kept for the purpose, under a distinctive number assigned to such motor vehicle or trailer or trail-

ers by the department, which book or index cards shall be open to inspection by the public during reasonable business hours.

(d) *Assignment of Number.*—Upon the filing of such application and the payment of the fee provided in this act, the department shall upon registration assign to such motor vehicle or trailer or trailers, a distinctive registration number.

(e) *Number Plates.*—The department shall furnish to every person whose motor vehicle or trailer or trailers shall be registered as aforesaid, on original registration, one number plate for motorcycles and trailers, and two number plates for automobiles, the same to have displayed upon them the registration number assigned to such vehicle, together with the abbreviation "Cal."; *provided, however,* that number plates furnished for trailers and for such motor vehicles as are exempted from the payment of the fees prescribed shall contain suitable distinguishing marks or symbols, and the numbers assigned in such cases shall run in different numerical series from the numbers assigned to other vehicles; *and provided, further,* that it shall not be necessary to apply for registration of implements of husbandry temporarily drawn, moved or otherwise propelled upon the public highway, nor shall it be necessary for the department to assign any distinguishing numbers to such implements of husbandry or to furnish number plates for display thereon; the number plates assigned as herein provided shall be and remain with the motor vehicle for the period of registration mentioned in the application therefor; such number plates shall be changed annually and shall be of a distinctly different color each year, and there shall be a marked contrast between the color of the number plates and that of the numerals or letters thereon.

(f) *Renewal of Registration.*—All motor vehicle registrations under this act shall expire January 31 of

each year and shall be renewed annually in the same manner and upon the payment of the same fee as provided for original registration, such renewal to take effect on the first day of February of each year. The plates and certificates of registration furnished by the said department as heretofore provided shall be valid during the year only in which they are furnished or issued.

(g) *Registration Fees.*—The following fees shall be paid to the department upon the registration of a vehicle, and shall accompany the application hereinabove provided for: For the registration of every motorcycle, two dollars; for the registration of every automobile, except electric automobiles, the sum of forty cents for each horsepower, or major fraction thereof, according to the formula specified in section three of this act; for the registration of every motor vehicle equipped with other than pneumatic tires, and used for commercial purposes, weighing under four thousand pounds unladen, five dollars in addition to the fees provided herein for horsepower rating or for electric motor vehicles; for every such vehicle weighing four thousand pounds and over and less than six thousand pounds unladen, ten dollars in addition to the fees provided herein for horsepower rating or for electric motor vehicles; for every such vehicle, weighing six thousand pounds and over and less than ten thousand pounds unladen, fifteen dollars in addition to the fees provided herein for horsepower rating or for electric motor vehicles; for every such vehicle weighing ten thousand pounds and over unladen, twenty dollars in addition to the fees provided herein for horsepower rating or for electric motor vehicles; for the registration of every electric motor vehicle, five dollars; for the registration of motor vehicles owned by or under the control of a manufacturer of, or dealer in, motor vehicles, ten dollars for the first set of number plates, and five dollars for each additional set; two number



plates of the same kind shall constitute a set; for the registration of the motorcycles owned by or under the control of a manufacturer of or dealer in motorcycles, five dollars for the first number plate and one dollar for each additional number plate; for every registration number plate for trailers, two dollars; for every chauffeur's license, two dollars; for an original operator's license no fee shall be charged; for the registration of every transfer of ownership shall be charged a fee of one dollar. Upon the filing of an affidavit showing the fact of loss or mutilation or illegibility, the fees for additional number plates, duplicate container, certificate of registration, chauffeur's badge, chauffeur's certificate, or duplicate operator's license shall be as follows; *provided*, that no affidavit will be required for duplicate operator's license: For every such number plate, one dollar; for every such duplicate container, twenty-five cents; for every such certificate of registration, fifty cents; for every such chauffeur's badge, one dollar; for every such chauffeur's certificate, fifty cents; for every such operator's license, twenty-five cents.

If application for the registration of a motor vehicle or for chauffeur's license is made during the period beginning on the first day of May and ending on the thirty-first day of July in any year, three-fourths of the annual fee shall be paid; if application is made during the period beginning the first day of August and ending the thirty-first day of October, one-half of such annual fee; if application is made during the period beginning on the first day of November and ending on the thirty-first day of January, one-fourth of such annual fee.

(h) *Certificate of Registration*.—The department shall also furnish with each number plate for motorcycles and with each pair of number plates for automobiles, and on each annual renewal of registration, a certificate of registration which shall contain upon the face thereof the following data: The name of the regis-

tered owner of the motor vehicle, his postoffice address, the name and address of the legal owner, and the make of the vehicle, the year model denoted by the manufacturer, the model or letter denoted by the manufacturer, if any, the engine or motor number, the registered horsepower, the registration number and the amount of annual registration fee, together with the date of issue of the certificate; *provided, however*, the name and address of the legal owner shall appear on the bottom line of the certificate of registration. In case of motorcycles, the manufacturer's serial number shall be stated in lieu of the engine number. Such certificate shall contain a blank space for the signature of the registered owner and shall be signed by such owner. The reverse side of said certificate shall contain forms (a) for notice to the department by the registered owner and the legal owner in case of transfer of ownership, as hereinafter required, and (b) for application to the department by the transferee, in case of transfer of said motor vehicle, for registration thereof in his name, said application to be in the form of a joint statement to be signed by both transferor and transferee and the legal owner and to contain in addition to such other particulars as may be required by said department, a statement of the postoffice address of the transferee so applying for registration. Said certificate shall contain the identical registration number denoted on the number plate or plates in connection with which such certificate is issued, and it shall be valid only for the year in which it is issued. Said certificate shall be enclosed in a suitable container, to be furnished by the department, such container to have a frame of aluminum or other metal and to have a cover of isinglass or other transparent material, through which such certificate can be easily inspected, and with such container said department shall furnish screws or other suitable means of attachment to the motor vehicle. Said number plates, certificates and containers shall be furnished by


the department without further charge than the fees specified in this act, with transportation prepaid, and shall be of substantial character and suitable form and design, to be determined by the department.

(i) *Transfer of Ownership*.—Upon the transfer of ownership of any motor vehicle registered under this act the person in whose name such vehicle is registered shall forthwith (a) file with the department a notice, upon the form furnished by the department and attached to the certificate of registration, containing the date of such transfer of ownership and the name and postoffice address of the transferee, and upon such transfer the title of the number plates shall vest in the transferee.

(j) *Joint Statement*.—Upon the transfer of ownership of any motor vehicle, the person in whose name such vehicle is registered and the person to whom ownership of such vehicle is to be transferred shall forthwith join in a statement of said transfer endorsed upon the reverse side of the certificate of registration of said motor vehicle in the space provided for said purpose, which statement shall be signed by the transferor and the legal owner in the manner and form of his signature contained on the face of said certificate and which statement shall likewise be signed by the transferee, who shall also set forth below his signature his postoffice address. Said statement shall include an application by the transferee for registration of said vehicle in his name. Said certificate so endorsed and bearing upon the reverse side thereof the signatures of the transferor and transferee, shall be forwarded by the transferee within ten days to the department together with fee of one dollar. The department shall file said certificate so jointly endorsed by transferor and transferee and upon receipt of the fee as above provided, the department, if satisfied of the genuineness and regularity of said transfer, shall register said motor vehicle in the name of said transferee.

(k) *New Registration Certificate*.—Upon such registration the department shall issue and forward to the applicant without further charge a new registration certificate. Until said transferee has received said certificate of registration and has written his name upon the face thereof in the blank space provided for said purpose by the department, delivery of said motor vehicle shall be deemed not to have been made and title thereto shall be deemed not to have passed and said intended transfer shall be deemed to be incomplete and not to be valid or effective for any purpose; *provided*, that where such transfer is made to a manufacturer or dealer to whom has been assigned a general distinguishing number and who intends to resell or otherwise retransfer said vehicle, the provisions of this act relative to the joint statement of transferor and transferee endorsed thereon, shall be complied with upon such sale or transfer.

(l) *Transfer by Operation of Law*.—In case of transfer of ownership of a motor vehicle, by operation of law, as upon inheritance, devise or bequest, order in bankruptcy or insolvency, execution sale, repossession upon default in performance of the terms of a lease or executory sales contract, or otherwise than by the voluntary act of the registered owner, the notice of transfer as well as the joint statement hereinabove provided for shall be signed by the executor, administrator, receiver, trustee, sheriff, or other representative or successor in interest of the registered owner, in lieu of such owner, and the transferee's application for registration shall be accompanied by a statement of the special facts in the premises; *provided*, that the department may in its discretion require from the transferee, before registering such motor vehicle, such additional information respecting such involuntary loss of ownership by the former registered owner as may be satisfactory to the department.





(m) *When Vehicle Not to Be Operated on Highway.*

Upon the transfer of ownership of any motor vehicle to a person not intending either to operate the same or to cause or permit the same to be operated upon the public highways, and not intending to transfer such motor vehicle to another person, a statement by said transferee of such fact or intent shall accompany the application for registration, in which case no fee for registration need be paid by the applicant, whereupon the department, if satisfied of the genuineness and regularity of said transfer and if satisfied of the facts stated in said application for registration, shall register, without any charge whatever, such motor vehicle in the name of said transferee and shall issue and forward to him a new registration certificate in a distinctive form to be determined by the department; *provided*, that until transferee has received said registration certificate, delivery of said motor vehicle shall be deemed not to have been made, and title thereto shall be deemed not to have passed and said intended transfer shall be deemed to be incomplete and not to be valid or effective for any purpose; *and provided, further*, that nothing herein contained shall be so construed as to permit such motor vehicle to be operated upon the public highway under such distinctive certificate of registration.

(n) *Registration Refused or Revoked.*—If the department shall determine, at any time, that for any reason a motor vehicle or trailer is unsafe or is improperly equipped or is otherwise unfit to be operated, or that the applicant for registration thereof is not entitled as owner thereof to such registration, the department may refuse to register such vehicle and may, for a like reason, revoke any registration already acquired.

(o) *Dealer's Registration.*—Every manufacturer of, or dealer in, motor vehicles may make application to the department, by mail or otherwise, upon a blank provided by the department, for a general distinguishing number

or symbol, instead of registering each motor vehicle owned by him, and with such application he shall deposit the proper registration fee as provided in this act; and the department shall grant the application if satisfied of the facts stated in the application and shall issue to the applicant a certificate of registration containing the name and business address of the applicant and the general distinguishing number or symbol assigned to him, and made in such form and containing such further information as the department may determine; and every motor vehicle owned or controlled by such manufacturer or dealer shall be regarded as registered under such general distinguishing number or symbol until ten days after being sold, or until let for hire, or until loaned for a period of more than ten successive days. The department shall furnish to every manufacturer of or dealer in automobiles or motorcycles applying therefor, one pair of automobile plates or one single motorcycle number plate, of suitable design, the plates to have displayed upon them the registration number which is assigned to the motor vehicles of such manufacturer or dealer, with a different symbol on each pair of automobile number plates and on each single motorcycle plate. The department shall furnish such additional number plates as required for any dealer, upon the payment of the fee therefor. If the department shall determine at any time for due cause that any such manufacturer or dealer to whom the certificate of registration has been issued and to whom such general distinguishing number or symbol has been assigned, has failed to comply with the requirements with reference to notices or reports of transfer of motor vehicles, or has caused or suffered, or is causing or suffering, the unlawful use of such certificate or number, the department may revoke said certificate of registration and recall and cancel said general distinguishing number or symbol, in which event said manufacturer or dealer, after notice of such action on

part of the department, shall, without further demand, return to the department any and all number plates that may have been furnished him by the department under said certificate so revoked; *provided*, that no manufacturer or dealer or any employee of such manufacturer or dealer, shall cause or permit the display, or other use, of any number plate, or certificate of registration which may have been furnished to such manufacturer or dealer under the general distinguishing number or symbol hereinbefore provided for, excepting upon motor vehicles owned by such manufacturer or dealer; *provided, further*, that no person shall display or otherwise use or have in his possession any number plate, or certificate of registration furnished by the department under a general manufacturer's or dealer's distinguishing number or symbol, except such manufacturer or dealer or his employees; *and provided, further*, that if the department, upon receiving from any manufacturer or dealer an application for the issuance for an ensuing calendar year of the certificate of registration and general distinguishing number or symbol provided for in this section, shall determine upon due cause that such manufacturer or dealer during the previous calendar year has failed to comply with the requirements respecting the filing of notices or reports of transfer of motor vehicles, or has caused or suffered, or is causing or suffering, the unlawful use of such certificate or number, the department may refuse such application.

(p) *Moving Unregistered Vehicle*.—When it shall become necessary for a manufacturer of, or dealer in, or consignee of, motor vehicles to move any vehicles owned by or consigned to him, not being registered, from any vessel, railroad depot, or warehouse, to the salesrooms or other place of business of such manufacturer or dealer, or to a warehouse or other place of storage, over the public highways, he may operate such vehicle, either under its own power or otherwise, over such public highways as are necessary for said purpose, without first registering

said motor vehicle or affixing thereto any number plates issued to him under the general distinguishing number or symbol hereinabove specified; *provided, however*, that in such event he shall first obtain from the police authorities or marshal of the city or town in which said vessel, railroad depot or warehouse is situated, a written permit authorizing such operation; and there is hereby conferred upon police authorities, including town marshals, within the State of California, authority to issue such permits in proper cases as hereinbefore provided.

(q) *Dealer's Notice of Sale*.—Upon the transfer of any motor vehicle by manufacturer or dealer, whether by sale, lease or otherwise, such motor vehicle not being registered, such manufacturer or dealer shall, forthwith upon such transfer, file with the department, upon a blank to be furnished by the department, a notice or report containing the date of such transfer, a description of such motor vehicle, and the name and postoffice of the purchaser, lessee or other transferee.

(r) *Notice of Dismantling*.—Before any person, firm or corporation shall wreck, dismantle or disassemble any motor vehicle, or substantially alter the form thereof, such person, firm or corporation shall give notice in writing upon forms to be furnished by the motor vehicle department of the intention so to do to the chief of police or marshal of the city or town in which such work is to be done, or if such work is to be done outside of an incorporated city or town, such notice shall be given to the sheriff of the county in which the work is to be done.

(s) *Notice of Transfer of Engine*.—Upon the transfer of any automobile engine or motor, except a new engine or motor transferred with intent that the same be installed in a new automobile, and whether such transfer be made by a manufacturer or dealer or otherwise, and whether by sale, lease or otherwise, the transferor shall within three days after such transfer file with the department, upon a blank to be furnished by the department,



a notice or report containing the date of such transfer and a description, together with the maker's number of said engine or motor, the name and postoffice address of the purchaser, lessee or other transferee.

(t) *Display of Number Plates.*—Except as otherwise provided, no person shall operate or drive, or cause to be operated or driven, a motor vehicle, or cause a trailer to be drawn by a motor vehicle, on the public highways unless such vehicle shall at all time have displayed the number plate or plates furnished for it as hereinbefore provided; in case of automobiles, each such vehicle shall display one number plate on the front and the other on the back thereof; in case of motorcycles and trailers, but one number plate shall be required to be displayed and such number plate upon motorcycles and trailers shall be at the rear thereof; in all cases such number plates shall be securely fastened to the motor vehicle or trailer so as to prevent said plates from swinging, and at a minimum distance of sixteen inches from the ground. Nothing in this act shall be construed to require the display of any number plate on other than the rear trailer, when more than one trailer is drawn by a motor vehicle. No person shall attach to, or display on, such motor or other vehicle, any number plate, or registration seal or certificate other than as assigned to it for the current year, or a fictitious, or altered number plate, registration certificate, or a number plate, or registration certificate that shall have been canceled by the department. All letters, numbers, printing, writing and other identification marks upon said plates, and certificates, shall be kept clear and distinct and free from grease, dust or other blurring matter, so that they shall be plainly visible at all times during daylight and under artificial light in the night time; *provided*, that in case any such plate, or certificate of registration, operator's license or chauffeur's license or badge shall be lost, mutilated or shall have become illegible, the person to whom such plate, seal, certificate, li-

cense or badge shall have been furnished shall immediately apply to the department for a duplicate thereof, accompanying his application with the fee.

(u) *Display of Registration Certificates.*—No person shall operate or drive a motor vehicle on the public highway unless such vehicle shall at all times carry in or upon it, subject to inspection by any peace officer, or employee of the department, the registration certificate furnished for it, which in case of an automobile shall be affixed, in the container furnished by the department, in plain sight in the driver's compartment of the automobile, and which, in case of a motorcycle, shall be carried either in plain sight affixed to said motorcycle, or in the tool bag or some other convenient receptacle attached to said motorcycle.

(v) *Added Penalty for Failure to Register.*—The registration fee required to be paid upon a motor vehicle or trailer shall become delinquent in the case of any such vehicle forthwith upon the operation of the vehicle on the public highways without the registration fee first having been paid to the department, accompanied by the application for registration. It is hereby provided, in addition to any and all other penalties, that if, at the expiration of thirty days after any registration fee becomes delinquent, such fee has not been paid and registration applied for, a penalty shall be added to the amount of such fee in an amount equal to twenty-five per cent of the fee, and that such fee, together with the amount of said penalty, shall be a lien upon the motor vehicle or trailer in regard to which said registration fee is delinquent, and the department shall have power and it is hereby made its duty to collect the said registration fee, together with the penalty, by seizure of such motor vehicle or trailer from the person in possession thereof, if any, and by the sale thereof. The seizure and sale herein authorized shall be conducted and carried out by the department in the same manner as is provided by law for

the seizure and sale of personal property by the county tax collector for the collection of taxes due on said personal property.

(w) *Operation Pending Renewal of Registration.*—In case of annual renewal of registration, where the applicants have in all things complied with the requirements of this act and have duly applied for such annual renewal of registration before the commencement of the ensuing calendar year, accompanying their applications with the proper fees for such registration, they shall be entitled to operate said vehicles during the month of February without displaying the registration certificates of the current year, on condition that they have at all times displayed upon said vehicles the number plates assigned to said vehicles respectively, together with the registration seals and certificates assigned thereto for the previous year.

Section 1264.—LIGHTS.—Where there is not sufficient light within the lateral boundaries of the public highway to reveal all persons, vehicles or other substantial objects within said boundaries for a distance of at least two hundred feet, and at all times during the period from a half hour after sunset to a half hour before sunrise, every automobile while on the public highway shall carry at the front at least two lighted lamps, and every such automobile and every trailer, shall carry at the rear a lighted lamp exhibiting a red light plainly visible, under normal atmospheric conditions, for a distance of five hundred feet toward the rear, and so constructed and placed that the number plate carried on the rear of such automobile or trailer shall be illuminated by a white light in such manner that the number thereon can be plainly distinguished under normal atmospheric conditions at a distance of not less than fifty feet toward the rear; *provided, however*, that where more than one trailer is attached to a motor vehicle, only the rear trailer shall be required to exhibit said light. All other vehicles, except bicycles,

motorcycles and motor trucks of two tons carrying capacity or over, which are so governed or mechanically constructed or controlled that they cannot exceed a speed of fifteen miles per hour, shall carry one or more lighted red lamps or lanterns so arranged that said red lamp or lamps shall be visible from every direction for a distance of not less than two hundred feet.

(a) *Bicycles*.—Every bicycle while on the public highway shall carry a lighted lamp visible under normal atmospheric conditions at least three hundred feet in the direction toward which such bicycle is faced, and shall also carry at the rear of such bicycle a reflex mirror or a lighted lamp exhibiting a red light plainly visible under normal atmospheric conditions for a distance of at least two hundred feet toward the rear.

(b) *Motorcycles*.—Every motorcycle while on the public highway shall carry at the front at least one lighted lamp, and shall also carry at the rear of such motorcycle a lighted lamp, exhibiting a red light plainly visible under normal atmospheric conditions for a distance of at least two hundred feet towards the rear.

(c) *Motor Trucks*.—Every motor truck of two tons carrying capacity or over, which is so governed or mechanically constructed or controlled that it cannot exceed a speed of fifteen miles per hour, shall carry at the front at least two lighted lamps which shall be visible at least two hundred feet in the direction in which the motor truck is proceeding, and when the vehicle is proceeding on a street or highway not so lighted as to reveal any person, vehicle or substantial object on the street or highway straight ahead of such motor truck for a distance of at least two hundred feet, such front light shall be sufficient to reveal any person, vehicle or substantial object on the road straight ahead for a distance of seventy-five feet or over, and shall be equipped with a tail light such as is required on other motor vehicles.

(d) *Overhanging Loads*.—In any case where a motor



or other vehicle shall be loaded with any material in such a manner that any portion of such load extends toward the rear four feet or more beyond the rear of the bed or body of the vehicle, there shall be displayed at the extreme end of the load, in addition to the ordinary rear or tail lights hereinbefore required to be displayed on such vehicle, a red light plainly visible under normal atmospheric conditions at least two hundred feet from the rear; *provided, further*, that at other times while such vehicle is upon the highway a red flag or cloth not less than sixteen inches in length nor less than sixteen inches in width shall be displayed at the extreme rear end of said load as a warning signal to persons operating vehicles approaching from the rear.

(e) *Headlights*.—The headlights of all automobiles upon the highways shall give a light of sufficient power and so distributed as provided herein in addition to and irrespective of any other requirements concerning headlights in this section contained. The term “headlight” as used herein, shall denote any light, located upon any portion of the said motor vehicle other than on the windshield, the windshield supports or top thereof, the rays of which are projected forwards, except sidelights of not to exceed four candle power; *provided, further*, that where there is sufficient light within the lateral boundaries of the public highway within any incorporated city, town or city and county, to reveal all persons, vehicles or substantial objects within said boundaries for a distance of two hundred feet, no lights shall be required to be displayed on any vehicle while the same is not in operation, providing that a wheel of such standing vehicle nearest the sidewalk is located within twelve inches of such sidewalk.

The headlights of motor vehicles shall be so arranged, adjusted, and constructed when the car is fully loaded, that any pair of headlights under the conditions of use must produce a light which:

1. When measured on a level surface on which the

vehicle stands at a distance of two hundred feet directly in front of the car and at some point between the said level surface and a horizontal passing through the top of the headlight reflector or lens, is not less than one thousand two hundred apparent candle power.

2. When measured at a point one hundred feet directly in front of the car, and at a height of sixty inches above the level surface on which the vehicle stands, does not exceed two thousand four hundred apparent candle power nor shall this value be exceeded at a greater height than sixty inches.

3. When measured at a distance of one hundred feet ahead of the car and seven feet or more to the left of the axis of same, and at a height of sixty inches above the level surface on which the vehicle stands, does not exceed eight hundred apparent candle power.

(f) *Testing Lighting Devices*.—All lighting devices, before being put on the market by the manufacturer must be tested by a skilled testing agency appointed by the superintendent of the motor vehicle department.

(g) *Spotlights*.—The term “spotlights” as used herein shall denote any light fastened to the windshield, the windshield support or top of motor vehicle, the rays of which are projected forward, except sidelights of not to exceed four candle power.

All spotlights used upon motor vehicles shall be so constructed or arranged that no portion of the main, substantially parallel beam of light when measured one hundred feet or more ahead of said lights shall rise or shall be capable of being raised from the driver's seat, to more than forty-two inches above the level surface upon which the vehicle stands directly ahead of such vehicle.

Section 1265.—CLEATS, ETC., ON TIRES.—Other than on vehicles actually engaged at the time in construction or repair work on public highways, no tire on any motor or other vehicle operated on or over any public highway or bridge shall have on its periphery any block, stud,

Section 1266, sub-division (a), page 987, "Business Law for Business Men," strike out all of said sub-division beginning with the word "no motor" on page 987, and ending with the words "without first obtaining a permit" on page 988, and substitute the following: "No motor or other vehicle or other object, or contrivance for moving loads, except as hereinafter otherwise provided, shall be operated or moved upon or over any public highway or bridge, the weight (including the load) of which resting upon the surface of said highway or bridge exceeds seven hundred pounds upon any inch of the channel base width of tire, when said vehicle is equipped with tires made of other material than metal; and no motor or other vehicle, object, or contrivance for moving loads shall be operated or moved upon or over any public highway or bridge the weight including the load of which resting upon the surface of said highway or bridge exceeds five hundred pounds upon any inch of width of tire, roller, wheel, or other object supported on the surface thereof, when such tires or the rolling surface of such rollers, wheels, or other objects are made in whole or in part of metal, without first obtaining a permit as hereinafter in this section provided.

"No solid rubber tires shall be used on any motor or other vehicle or contrivance for moving loads over any public highway or bridge unless such tire has rubber on its entire traction surface at least one inch thick above the edge of the flange."

Section 1269, page 990—LIMITING MAXIMUM LOAD—In line 9 of section 1269, strike out all after the words "not less" and substitute the following: "than 100 feet or more than 150 feet from the approaches to such bridge, causeway, viaduct, trestle or dam."

Anything to the contrary in this act notwithstanding, the owner and the operator, driver or mover of any vehicle, object or contrivance over a public highway or bridge, shall be jointly and severally responsible for all damages which said highway or bridge may sustain as the result of so operating or driving or moving such vehicle and the amount of such damages may be recovered in an action at law by the authorities in control of such highway or bridge.

Act of the Legislature of California, approved May 3, 1921; in effect July 3, 1921.





flange, cleat, ridge, bead or any other protuberance of metal or wood, which projects beyond the tread or traction surface of the tire; but this shall not be so construed as to prohibit the use of tire chains of reasonable proportions on motor vehicles when required for safety because of snow, ice, or other conditions tending to cause such motor vehicle to slide or skid; *provided, however*, that traction engines or tractors the propulsive power of which is exerted not through wheels resting upon the ground but by means of a flexible band or chain, known as a movable track, may be operated upon the public highways with transverse corrugations upon the periphery of said movable tracks, on condition that a permit shall first have been obtained.

Section 1266.—TOTAL WEIGHT LIMIT.—No motor or other vehicle shall be operated on or over any public highway or bridge, nor shall any object be moved over or upon any public highway or bridge on wheels, rollers, or otherwise, except when transported in or upon vehicles running exclusively on stationary rails or tracks, in excess of a total weight, including load, of thirty thousand pounds, when said motor or other vehicle or contrivance is equipped with four wheels running on the highway, or in excess of a total weight, including load, of forty thousand pounds when said motor or other vehicle or contrivance shall be equipped with six wheels running on the highway and with three axles not less than ninety-six inches apart, without first obtaining a permit.

(a) *Weight Limit Per Inch of Tire Width*.—No motor or other vehicle or other object, or contrivance for moving loads shall be operated or moved upon or over any public highway or bridge, the weight of which resting upon the surface of said highway or bridge exceeds eight hundred pounds upon any inch of width of tire, when said vehicle is equipped with tires made of other material than metal; and no other vehicle, object, or contriv-

ance for moving loads shall be operated or moved upon or over any public highway or bridge the weight of which resting upon the surface of said highway or bridge exceeds six hundred pounds upon any inch of width of tire, roller, wheel or other object supported on the surface thereof when such tires or the rolling surface of such rollers, wheels or other objects are made in whole or in part of metal, without first obtaining a permit; *provided, however,* that traction engines or tractors the propulsive power of which is exerted not through wheels resting upon the ground but by means of a flexible band or chain, known as a movable track, shall not be subject to the foregoing limitations upon permissible weights per inch of width of tire if the portions of the movable tracks in contact with the surface of the highway present plane surfaces; *and provided, further,* that cities heretofore or hereafter organized under freeholders' charters may permit or prohibit the increase, beyond the maximum weight per inch in width of tire hereinabove prescribed, of the weight of loads carried within the limits of such cities in or upon metal-tired vehicles drawn by muscular power, but where any such city has not by proper and suitable ordinance or other regulation permitted or prohibited such increase of maximum weight of loads, the regulations and limitations prescribed by this act shall not apply.

The supervisors of any county shall have power to require a lighter load on county roads in their respective counties.

(b) *Penalty.*—Any person violating these provisions shall be guilty of a misdemeanor and is liable to a penalty of twenty dollars for each full ton in excess of the limitation herein imposed, and any peace officer making the arrest of the owner or driver of any vehicle shall keep said vehicle with its load in his custody until such time as said penalty shall have been paid; *provided,* that the owner or driver of any such vehicle may give to said

peace officer a bond in favor of the State of California in case of state highways, and in the name of the county in which the offense has occurred in the case of county roads, conditioned to secure the payment of said penalty within the time prescribed in said bond. Furthermore, any peace officer may require the owner or the driver to drive any such vehicle to the nearest public scales to be designated by such peace officer for the purpose of establishing the weight and the load of any such vehicle.

Section 1267.—TRAILER LIMITATION.—No motor vehicle shall be operated or driven over any public highway or bridge drawing or having attached thereto more than two trailers; *provided*, that all four-wheeled trailers excepting light camping trailers shall be equipped with suitable brakes.

Section 1268.—PERMITS BY DEPARTMENT OF ENGINEERING.—Upon application in writing to the state department of engineering, said department of engineering in its discretion may issue a special permit to the owner or operator of any vehicle allowing heavier or wider loads than in this act permitted to be moved or carried over and on the public highways and bridges, or allowing more than two trailers to be drawn by a motor vehicle; and may also issue such special permit to increase the permissible weights per inch of width of tire, and also permit the use of corrugations on the periphery of the movable tracks of traction engines or tractors propelled not by wheels resting upon the ground but by flexible bands or chains. All such special permits shall be carried in the vehicles to which they refer and shall upon demand be open to the inspection of any peace officer, any authorized agent of the department of engineering or of the motor vehicle department, or any officer or employee charged with the care or protection of the public highways. It shall be unlawful for any person to violate,

or to cause or permit to be violated, the limitations or conditions of such special permits.

Section 1269.—WEIGHT ON BRIDGES, ETC.—The state department of engineering may in its discretion limit the maximum load to be carried over or on any public bridge, causeway, viaduct, trestle or dam, below the maximum established by law; *provided, however*, that in such event said department of engineering shall cause suitable signs to be erected and maintained, specifying such limitations of load, such signs to be placed at a distance of not less than one hundred fifty feet from the approaches to such bridge, causeway, viaduct, trestle or dam.

Section 1270.—LIABILITY FOR DAMAGES.—The owner and the operator, driver or mover of any vehicle, object or contrivance over a public highway or bridge, shall be jointly and severally responsible for all damages which said highway or bridge may sustain as the result of so operating or driving or moving such vehicle, and the amount of such damages may be recovered in an action at law by the authorities in control of such highway or bridge.

Section 1271.—INTOXICATED DRIVER, PENALTY.—No person who is under the influence of intoxicating liquor and no person who is an habitual user of narcotic drugs shall operate or drive a motor or other vehicle on any public highway within this state. Any person violating the provisions of this section shall be punished by imprisonment in the county jail of not less than six months nor more than one year, or by imprisonment in the state prison for not less than one or more than three years, or by a fine of not less than five hundred dollars nor more than five thousand dollars.



**Section 1272.—RULES OF THE ROAD.**—The driver or operator of any vehicle in or upon any public highway shall drive or operate such vehicle in a careful manner with due regard for the safety and convenience of pedestrians and of all other vehicles or traffic upon such highway, and wherever practicable shall travel on the right-hand side of such highway. Two vehicles which are passing each other in opposite directions shall have the right of way, and no other vehicle to the rear of either of such two vehicles shall pass or attempt to pass such two vehicles. On all occasions the driver or operator of any vehicle in or upon any public highway shall travel upon the right half of such highway unless the road ahead on the left-hand side is clear and unobstructed for at least one hundred yards ahead, and in all cases while crossing an intersecting highway. For the purposes of this section and its subdivisions, an animal or animals attached to any conveyance shall, with such conveyance, be deemed to constitute one vehicle.

(a) *Passing Vehicles.*—Vehicles proceeding in opposite directions shall pass each other to the right, each giving to the other one-half the road as nearly as possible.

(b) *Overtaking Vehicles.*—Vehicles overtaking other vehicles proceeding in the same direction shall pass to the left thereof and shall not again drive to the right until reasonably clear of such overtaken vehicle.

It shall be the duty of the driver, rider or operator of a vehicle about to be overtaken and passed to give way to the right in favor of the overtaking vehicle, on suitable and audible signal being given by or on behalf of the operator, driver or other person in charge and control of such overtaking vehicle if such overtaking vehicle be a motor vehicle.

(c) *Distance Between Vehicles.*—Vehicles must be operated so as to allow a safe distance between such vehicles and any persons, vehicles or animals preceding them

upon the highway, and outside of the business district of any county, incorporated city and county, city or town, contiguous to a public highway as such business district is defined in this act, no vehicle shall, while in motion, be closer than fifteen feet to any vehicle, person or animal in front thereof.

(d) *Intersections, Right of Way.*—Excepting where controlled by such traffic ordinances or regulations as are permitted under this act the operator of a vehicle shall yield the right of way at the intersection of their paths to a vehicle approaching from the right, unless such vehicle approaching from the right is further from the point of the intersection of their paths than such first named vehicle.

Any vehicle traveling on a public highway which is divided longitudinally by a parkway or an isle of safety, shall keep to the right of such parkway or isle of safety unless otherwise directed by the provisions of any ordinance, rule or regulation of competent local authorities.

It shall be the duty of the person operating or in charge of an overtaking vehicle to sound audible and suitable signal before passing a vehicle proceeding in the same direction.

(e) *Turning at Intersections.*—All vehicles approaching an intersection of a public highway, with the intention of turning thereat, shall in turning to the right keep to the right of the center of such intersection, and in turning to the left shall run beyond the center of such intersection, passing to the right thereof, before turning such vehicle toward the left. The “center of such intersection” shall be held to mean the meeting point of the medial lines of the two highways traversed by the vehicle making the turn.

(f) *Horses, Precautions on Meeting.*—In all passing and overtaking such assistance shall be given by the occupants of each vehicle respectively to the other as the circumstances shall reasonably demand in order to obtain

clearance and avoid accidents; every person having control or charge of any motor vehicle or other vehicle upon any public highway and approaching any vehicle drawn by a horse or horses, or any horse upon which any person is riding, shall operate, manage and control such motor vehicle or other vehicle in such manner as to exercise every reasonable precaution to prevent the frightening of any such horse or horses and to insure the safety and protection of any person riding or driving the same; and if such horse or horses appear frightened the person in control of such motor vehicle or other vehicle shall reduce its speed, and if requested by signal or otherwise by the driver or rider of such horse or horses shall not proceed further toward such animal or animals unless such movement be necessary to avoid accident or injury, until such animal or animals be under the control of the driver or rider thereof.

The operator of any vehicle shall not operate or drive the same so as to pass or overtake any other vehicle going in the same direction at any street intersection unless directed so to do by a traffic or police officer.

(g) *Slowly-moving Vehicle*.—The person in control of any vehicle moving slowly along and upon any public highway shall keep such vehicle as closely as practicable to the right-hand boundary of the highway, allowing more swiftly moving vehicles reasonably free passage to the left.

(h) *Mirror Required*.—No person shall operate or drive any motor vehicle that is so covered, loaded or constructed as to obscure the driver's view of the highway to the rear, nor any vehicle which is so covered, loaded or constructed that any portion thereof to the rear of the driver projects more than twelve inches beyond the extreme left side of the driver's seat, unless there is placed on said vehicle a mirror so located as to reflect to the driver a view of the highway for at least two hundred feet behind such vehicle.

(i) *Arm signals.*—The person in charge of any vehicle in or upon any public highway, before turning, stopping, or changing the course of such vehicle, and before turning such vehicle when starting the same, shall see first that there is sufficient space for such movement to be made in safety, and if the movement or operation of other vehicles may reasonably be affected by such turning, stopping or changing of course, shall give plainly visible signal to the persons operating, driving or in charge of such vehicles of his intention so to turn, stop, or change his course, either by the use of his hand and arm, which shall be visible from the rear, or by the use of an approved mechanical or electrical device. Any such device shall upon application to the motor vehicle department be tested and certified as adequate to give the signal herein required, in the same manner and upon the payment of the same fee as in the case of headlights.

When the signal required by this section is given by the use of the hand and arm the intention to turn such vehicle toward the right or the left shall be indicated by extending the hand and arm horizontally from and beyond the side of the vehicle toward which the turn is to be made or by extending the hand and arm vertically with the hand pointing upward from the side opposite the direction toward which the turn is to be made; when the signal to be given is to indicate the intention to stop a vehicle or to abruptly or suddenly check its speed, such signal if given with the hand and arm shall be given by extending the hand and arm out from and beyond either side of the vehicle and pointed in a downward direction.

(k) *Passing Street Cars.*—In passing any railroad, interurban or street-car while passengers are alighting from or boarding the same, vehicles shall be operated or driven on the right hand side of such cars and at a rate of speed not exceeding ten miles an hour, and no portion thereof or of any load thereon shall come within six feet of the running board of steps of such cars, and shall at



all times be operated with due care and caution so that the safety of such passengers shall be assured; *provided, however,* that where local authorities have plainly marked upon the surface of the highway safety zones for the protection of such passengers, vehicles shall not, at any time, be operated or driven within such zones; *provided, further,* that said safety zones shall only be marked at street corners or at other regularly established stations or stopping places of such railroad, or interurban, or street cars, and shall not extend beyond seven feet toward the boundary of the highway from the outer rail of such railroad, interurban or street car line.

Every motor vehicle when moving in defiles, canyons, or mountain passes where the curvature of the road or highway prevents a clear view for a distance of one hundred yards shall be held under control and not permitted to coast, and the operator thereof in approaching curves shall give a warning of his gong or other adequate signaling device.

No vehicle except vehicles operated by the fire department or police department of any incorporated city and county, city or town, shall be turned so as to proceed in the opposite direction except at an intersection of the public highway. In so turning vehicles shall pass beyond and around the center of such intersection. This provision shall not apply except in a business district or closely built up territory.

(1) *Police and Fire Department Vehicles.*—Police and fire department vehicles shall at all times be equipped with a siren, and it shall be unlawful for any other vehicle to be equipped with or use such a device.

Vehicles of the police or fire department of any incorporated city or county, city or town, shall in all cases while being operated as such, have right of way over all other vehicles with due regard to the safety of the public; but this provision shall not protect the driver or operator of any such vehicle or his employer or principal from the consequence of the arbitrary exercise of this right, nor

shall it be construed as permitting the violation by the operators of any such vehicles of any of the provisions of this act, except the operators of police vehicles when such vehicles are being operated in the chase or apprehension of violators of the law or of persons charged with or suspected of any such violation.

Upon the approach of any police or fire department vehicle it shall be the duty of the operator of any street car, upon the sounding of a signal by such police or fire department vehicle, to stop such street car forthwith, unless at the time such street car is crossing an intersection of the public highways, in which event it shall be operated so as to clear the intersection of the highways and then stopped, and every other vehicle shall immediately be moved to a position as near as possible and parallel to the right-hand curb, and shall remain there until the police or fire department apparatus has passed such vehicle.

(m) *Fire Hydrants Protected*.—No person shall hitch or leave standing, or cause or permit to be hitched or left standing, any animal, or leave standing or cause or permit to be left standing, any vehicle, or stop or cause or permit to be stopped any animal or vehicle at any time upon the public highway within fifteen feet of any public fire hydrant located upon the public highway or sidewalk, unless such animal is under the charge of some person capable of driving the same or unless such vehicle is in the charge of some person capable of operating or driving the same.

(n) *Width of Vehicle*.—No motor or other vehicle as defined in this act shall be operated or driven on or over any public highway or bridge if the outside width of tread exceeds one hundred twelve inches or if the total outside width of the bed of said vehicle and any load thereon shall exceed one hundred two inches, nor shall any pleasure type automobile be operated on or over any public highway or bridge if any luggage, package, trunk,

crate, box or other load carried thereon extends to the left side more than twelve inches beyond the body of such automobile; *provided, however*, that any city now or hereafter organized under freeholders' charter may permit or prohibit an increase beyond the maximum hereinbefore prescribed of the total outside width of the beds of vehicles and any loads thereon, where such vehicles are operated or driven and said loads are carried wholly within the limits of said city, but where any such city shall not by proper and suitable ordinance or other regulation permit or prohibit such increased width, the regulations and limitations prescribed by this act shall not apply; *and provided*, that the regulations and limitations prescribed by this act relative to the maximum widths of vehicles and their loads shall not apply to implements of husbandry temporarily drawn, propelled or moved upon the highway; *and provided, further*, that loads not exceeding ten feet in width of loosely-piled material not crated, baled, boxed, sacked or carried otherwise than loosely in bulk, may be carried upon vehicles on the highway; *provided*, that the extreme width of such vehicles, including any loading racks thereon, shall not exceed one hundred twenty inches, as hereinbefore prescribed.

(o) *Repairing Vehicle on Highway*.—No person shall leave standing, or cause or permit to be left standing upon the main traveled portion of any public highway, a vehicle undergoing repair, or which has been stopped for the purpose of having repairs made thereon, or for the purpose of camping; *provided, however*, that this provision shall not apply to a vehicle which shall be disabled, while on such main traveled portion of the highway, in such manner and to such extent that it shall be impossible to avoid stopping such vehicle on said main traveled portion of the highway, and impracticable to remove the same therefrom until repairs shall have been made.

(p) *Livestock on Highway*.—No person owning, or controlling the possession of, any horse, cow, mule, ass, sheep, goat, hog or other live stock, shall voluntarily or negligently permit such animal to stray upon or remain unaccompanied by a herder or other person in charge or control thereof upon a public highway, either side of which is adjoined by property which is separated from such highway by a fence, wall, hedge, sidewalk, curb, lawn or building, or shall permit the tether or any portion thereof to which such animal may be attached, to lie across or upon any public highway, and no person shall feed, pasture or camp any such live stock upon any public highway between the hours of sunset and sunrise without keeping a sufficient number of herders on continual duty to keep open the road so as to admit at all times of the ready passage of vehicles, and also keeping red lanterns or lights burning to warn the public of the presence of such stock.

(q) *Firearms*.—No person shall discharge any firearms on any public highway.

(r) *Leaking Contents, Etc.*—No vehicle shall be operated on any public highway unless it is so constructed as to prevent its contents from dropping, sifting, leaking, or otherwise escaping from such vehicle.

(s) *Wind Shields*.—Every motor vehicle used for commercial purposes shall be equipped with an adequate wind shield.

Section 1273.—SPEED LIMITS.—Any person operating or driving a motor or other vehicle on the public highways shall operate or drive the same in a careful and prudent manner and at a rate of speed not greater than is reasonable and proper, having regard to the traffic and use of the highway, and no person shall operate or drive a motor vehicle or other vehicle on a public highway at such rate of speed as to endanger the life or limb of any person or the safety of any property; *provided*, that it



shall be unlawful to operate or drive at a rate of speed in excess of thirty miles an hour, except in the daytime and except when the operator or driver has a clear and uninterrupted view of the highway on which he is traveling in the direction toward which he is traveling and of all highways which intersect such highway within four hundred feet ahead of such operator or driver, to a distance of at least four hundred feet from the highway on which he is traveling, and there is no person, vehicle or other object visible ahead on such highway on which such operator or driver is traveling within four hundred feet of such operator or driver or on any such intersecting highway within four hundred feet of the point of the intersection of the center lines of such highways; *provided, also*, that in no case shall any vehicle be operated at a rate of speed in excess of thirty-five miles an hour; *and provided, further*, that in any event no person shall operate or drive a motor vehicle or other vehicle on any public highway where the territory contiguous thereto is closely built up, at a greater rate of speed than twenty miles an hour, or in the business district of any incorporated city and county, city or town, at a greater rate of speed than fifteen miles an hour; *provided, further*, that no person shall operate or drive a motor vehicle or other vehicle on any public highway at a greater rate of speed than fifteen miles an hour in approaching any steam, electric or other railway crossing at grade, or in approaching or traversing an intersecting highway, or crossing or intersection of highways, or in approaching or going around corners or curves in the highway, when in any of the foregoing cases the operator's or driver's view of the road or railway traffic is obstructed, but anything to the contrary herein notwithstanding, no person shall operate or drive a motor vehicle or other vehicle on any public highway at a greater rate of speed than ten miles an hour in traversing any steam, electric or other railway crossing at grade when the operator's or

driver's view of the crossing or of any traffic on such railway within four hundred feet of such crossing is obstructed; *provided, further*, that the board of supervisors of any county and city and county within this state, and the board of trustees, city council or other governing body of every municipality within this state, within six months after the passage of this act, shall place and thereafter maintain warning signs on every public highway approaching a crossing at grade of such highway and the tracks of any railway, at a reasonable distance, not less than three hundred feet, from such crossing, and on either side thereof. Such sign shall consist of a metal disc twenty-four inches in diameter, the field enameled white, with an enameled black border line one inch wide, and with an enameled black vertical and horizontal cross-line two and one-half inches wide; the reverse side of such disc to be colored black. In each of the upper quarters shall appear in black enamel the letter "R," five inches high, three and three-quarter inches wide, lines one inch stroke. Anyone defacing, injuring, knocking down or removing any such sign shall be guilty of a misdemeanor; *provided, further*, that the maximum rate of speed over any bridge, dam, trestle, culvert, causeway or viaduct as well as the maximum rate of speed over any state highway or portion of state highway may be established by the state highway commission at less than the rate established by law, when in the judgment of said commission the safety of persons using the highway or the protection of the highway shall be promoted thereby, but whenever any such different rate of speed is so established by said commission, the commission shall cause to be erected suitable signs to mark the location and limits of the highway to which said different rate of speed shall apply, and such signs shall be placed at a distance of not less than one hundred feet or at a greater distance than one hundred fifty feet from the highway or portion of highway or from the

approaches of any bridge, dam, trestle, culvert, causeway or viaduct with respect to which such different rate of speed may be so established. In the case of a bridge, dam, trestle, culvert, causeway or viaduct, such maximum rate of speed so established by said commission shall not be less than ten miles an hour, and in the case of any other highway or portion of highway, such maximum rate of speed so established shall not be less than fifteen miles an hour.

(a) *Speed Limit of Trucks.*—No motor or other vehicle carrying a weight in excess of nine thousand pounds, including the vehicle, shall be operated, driven drawn or otherwise moved on any public highway or bridge at a rate of speed greater than twenty-five miles an hour; no motor or other vehicle carrying a weight in excess of twelve thousand pounds, including the vehicle, shall be operated, driven, drawn or otherwise moved on any public highway or bridge at a rate of speed greater than fifteen miles an hour; no motor or other vehicle carrying a weight in excess of twenty-four thousand pounds, including the vehicle, shall be operated, driven, drawn or otherwise moved on any public highway or bridge at a rate of speed greater than ten miles an hour; *provided, however,* that no motor vehicle or trailer equipped with tires made wholly or partly of metal shall be operated, driven, drawn or otherwise moved on any public highway or bridge at a rate of speed greater than six miles an hour; *provided, further,* that any such motor vehicle or trailer, with tires made wholly or partly of metal, may be operated, driven, drawn or otherwise moved, subject to the other provisions of this act, up to ten miles an hour, if it be equipped with springs and if the rear wheels be not less than forty-six inches in diameter, with a bearing surface of not less than eighteen inches; *and provided, further, however,* anything to the contrary herein notwithstanding, that no motor or other vehicle constructed or otherwise adapted for carrying loads weighing four tons or more, exclusive of such

vehicle, shall be operated, driven, drawn or otherwise moved upon the public highway, whether laden or unladen, at a rate of speed exceeding fifteen miles an hour; *and provided, further*, that nothing contained in this subdivision shall apply to motor vehicles equipped with pneumatic tires.

(b) *Arrests for Speeding.*—In case of any person arrested for violation of the provisions of this section, unless such person shall demand that he be taken forthwith before the most accessible magistrate, the arresting officer shall take the name and address of such person and the number of his motor vehicle and notify him in writing to appear before a magistrate of the township in which the offense for which such person is arrested is alleged to have been committed at a time and place to be specified in such writing at least five days subsequent to the date of such notice; upon the promise in writing of such person to appear at such time and place, such officer shall forthwith release him from custody. In the event that any person arrested for any violation of the provisions of this section, demands to be or is taken forthwith after his arrest before a magistrate he shall be entitled to at least five days continuance of his case within which time to prepare to plead or prepare for trial, and he shall not be required to plead or to be tried within such five days unless he waives such time in writing or in open court; *provided*, that he promises in writing, after notice in writing of the time and place for his further appearance in court to appear at such time and place. Upon the giving of such written promise, or, if he refuse to give such promise, on bail fixed by the magistrate he shall thereupon be forthwith released from custody. Any person wilfully violating such promise shall be guilty of a misdemeanor regardless of the disposition of the charge upon which he was originally arrested.



Section 1274.—OPERATOR'S AND CHAUFFEUR'S LICENSES.—It shall be unlawful for any person to operate or drive a motor vehicle upon the public highway unless licensed by the department as hereinafter provided; *provided, however*, that the requirements of this section shall not apply to the operators or drivers of any implements of husbandry temporarily drawn, propelled or moved on the public highway. Before operating a motor vehicle upon the public highway, application for a license to operate such vehicle shall be made by mail or otherwise to the department upon a blank to be prepared and furnished on request by said department.

(a) *Certificates*.—To each person shall be assigned some distinguishing number or mark and the department shall issue to the licensee a certificate in such form as the department shall determine; it shall contain the distinguishing number or mark assigned to the licensee, his name, age, place of residence, business address if any, and a brief description of the licensee for the purpose of identification, and such other information as the said department shall deem necessary. Every person licensed to operate motor vehicles as aforesaid, whether as chauffeur or operator, shall indorse his usual signature in the space on the license certificate provided for the purpose, immediately upon the receipt of said certificate, and his license shall not be valid until the certificate is so indorsed. Licenses to chauffeurs shall be valid during the calendar year only in which issued. Licenses issued to operators shall be valid until revoked.

(b) *Chauffeur's Badge*.—The department shall furnish to every chauffeur licensed a suitable metal badge with the distinguishing number assigned to him stamped thereon, without extra charge therefor, such badge to have stamped thereon the words "Registered Chauffeur No. \_\_\_\_\_, Cal." with the said license number and year of issue inserted therein. This badge shall thereafter be worn by such chauffeur, affixed to his clothing

in a conspicuous place, at all times when he is operating or driving a motor vehicle upon the public highway, and the license certificate issued to each chauffeur or operator, under the provisions of this section, shall be carried by the licensee at all times when he is operating or driving a motor vehicle upon the public highway and shall be produced by him for inspection upon request of any peace officer. In case of the loss of such badge or certificate a duplicate will be issued by the department on the filing of an affidavit showing the fact of loss, and on payment of a fee of one dollar to the department in the case of a badge and fifty cents in case of a certificate. Duplicate license certificates shall be issued by the department to operators other than chauffeurs upon application therefor, whether in case of loss or otherwise, upon payment of a fee of twenty-five cents to the department. Applications for the annual renewal of licenses by chauffeurs shall be accompanied by the fee required.

(c) *Minor's License*.—No chauffeur's license badge shall be issued to any applicant under the age of eighteen years; *provided*, that it shall be unlawful for any person to cause or knowingly to permit his or her child, ward or employee to operate or drive a motor vehicle upon the public highway, whether as a chauffeur or operator, without having first obtained such license as is hereinbefore specified; *provided*, that the application to the department of a minor to operate or drive a motor vehicle, whether as chauffeur or operator, shall not be granted by the department unless the parent or parents having the custody of such applicant or the guardian of such applicant shall have joined in said application by signing the same; *and provided, further*, that any negligence of a minor, so licensed, in operating or driving a motor vehicle upon the public highway, whether as chauffeur or operator, shall be imputed to the person or persons who shall have signed the application of such minor for said license, which person or persons shall be jointly and

severally liable with such minor for any damages caused by such negligence.

Section 1275.—USING CAR WITHOUT OWNER'S CONSENT.—It shall be unlawful for any person to drive or operate, or cause to be driven or operated, upon the public highway any motor vehicle not his own, whether with or without intent to steal the same, in the absence of the owner thereof without such owner's consent; *provided*, such consent shall not be implied in any instance because of the fact that upon a previous occasion such owner had consented to the use of the same or another motor vehicle by such person. Any person violating any of the provisions of this section shall be punished by imprisonment in the state prison for not less than one year nor more than five years.

Section 1276.—GENERAL PENALTIES.—Excepting where a different penalty is expressly fixed by this act, any person violating any of its provisions, or knowingly making a false statement or knowingly concealing a material fact or otherwise committing a fraud in an application for the registration of a vehicle, or in an application for an operator's or chauffeur's license, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

Section 1277.—REVOCATION OF LICENSE.—Immediately upon receipt by the department of information concerning the conviction of any person for the violation of this act, or concerning the third conviction within one year of any person for the violation of this act, the department shall forthwith revoke the operator's or chauffeur's license issued to such person by the department, and shall issue no operator's or chauffeur's license to any such

person within one year thereafter.

Upon the suspension or revocation of any chauffeur's or operator's license, the department shall demand the surrender of the license certificate, and any duplicates thereof that may have been issued, and also the license badge, if any, and it shall be unlawful for any person whose license has been suspended or revoked as herein provided to fail or neglect forthwith to surrender to the department any such certificates or badge in his possession or under his control.

(a) *Complaints of Reckless Driving.*—Upon receiving within one year verified written complaints made by one or more persons of two or more separate instances of reckless, negligent or unlawful operation of a vehicle on any public highway in this state by any person to whom the department has issued a valid unrevoked operator's or chauffeur's license the department may, in the discretion of the superintendent thereof, fix a time and place for a hearing to determine whether or not the operator's or chauffeur's license held by such person should be revoked on the ground that such person is an unfit person to be so licensed. The person so complained of shall be served with a written notice, at least ten days prior to the date of said hearing, to appear and show cause, at such hearing, why his license to operate a motor vehicle upon the public highways should not be suspended or revoked. Such hearing shall be held by the superintendent of the department or by any person or person's not exceeding three, officers or employees of the department whom he may designate. If upon such hearing it is determined that there is good and sufficient reason therefor findings and an order shall be made by the superintendent or by the person or persons holding such hearing on his behalf to the effect that such license should be revoked. The department shall thereupon cause such person's license as an operator or chauffeur to be forthwith revoked if the findings hereinbefore provided for



show or declare that such operator or chauffeur is a reckless or negligent driver, or that he is incompetent or unfit to operate a motor vehicle because of mental or physical infirmities or disabilities.

If in any case the respondent shall fail to appear at the time and place fixed for any such hearing as is provided in this section, he shall be in default, and if in the opinion of the superintendent or of the person or persons holding such hearing on his behalf, there is sufficient reason therefor, the license of the respondent may be ordered revoked or suspended, whereupon the department shall upon notice of such order, revoke or suspend, as the case may be, such license.

Act of the Legislature, approved May 2, 1919;  
in effect at midnight January 31, 1920.

Section 1278.—GARAGES AND GARAGE KEEPERS.—The word “garage” is of French origin, and signifies a depot for the storage and repairs of motor cars. And in this country it is often used to mean a place not only for the storage and repair of cars, but also for the sale of automobiles. The garage occupies with relation to automobiles the same place that livery stables do with respect to horses.

Section 1279.—RELATION OF GARAGE KEEPER TO HIS CUSTOMER.—The storage of an automobile in a garage constitutes the keeper a bailee for hire. The liability of the bailee in this class of bailments is for the care and custody of the property placed in his possession and control; it therefore follows, that his liability does not begin until he has the possession and control of the property, and continues until the possession and control is surrendered to the bailor, or his assigns, or to the rightful owner. The garage keeper holds the property for no other purpose than to care for it during the continuance of the relation in accordance with the contract, and to

redeliver it to the bailor upon the termination of the contract. He has no title to the property except the possessory interest given him as bailee, and his right to the possession ceases whenever he is guilty of fraud or bad faith, or any misuse of the property. The contract for the storage can be terminated at the will of the person putting the car into the garage. The garage keeper must at all times upon reasonable demand and notice be ready to deliver the property to the person who placed it with him.

Section 1280.—FAILURE TO REDELIVER TO CUSTOMER.—Not only is the garage keeper required to deliver the car he has had in his possession to the bailor at the termination of the bailment, but for a misdelivery, whether by mistake or negligence, he will be liable for damages. For a mistake or negligence in the performance of his duty which renders it impossible for him to deliver the property, he will be held accountable the same as if he had converted the property to his own use. He will be held to know who his bailor is, and can have no legal reason for making a mistake in delivery.

Van Zile on Bailments, Second Edition, Section 208.

Section 1281.—LIABILITY FOR THEFT OF ARTICLES LEFT IN GARAGE.—The garage keeper is bound to exercise ordinary care and prudence according to the circumstances, regarding goods entrusted to him. This liability extends not only to the storage of the automobile itself, but also to the goods or property of the owner left in connection with the machine, even though responsibility for such goods is not covered by the express terms of the bailment. But it is doubtful if the garage keeper would be liable for lost articles, left in the car, such as robes, coats, etc., unless his attention were especially called to them when the car was brought in. If, however, a car is

brought into a garage, and the garage keeper allows it to be left in the garage with such articles in it, with notice that they are there, he will be liable for the value of such articles if they are stolen while in his place.

Section 1282.—LIABILITY OF GARAGE KEEPERS FOR DAMAGE TO CAR TAKEN OUT WITHOUT LEAVE.—The garage keeper will be liable in a civil action for damages, if by reason of his negligence the car is taken out of the garage without the owner's consent, and damaged on the road. It is the duty of the garage keeper to take reasonable care of the car.

Section 1283.—LIABILITY FOR LOSS OF CAR.—The garage keeper is not liable for loss of a car that is caused, (1) by the act of God, as by lightning, earthquake, tornadoes, storms, and the like; or (2) by the act of the public enemy; or (3) by unavoidable accident, as by fire, burglary, etc., unless by exercising ordinary diligence such loss could have been averted. The garage keeper is bound to maintain a safe building, with reasonable care and guard of the property, and he is bound to maintain reasonable protection against fire. If he does not do this, and by reason of an unsafe building, or by reason of fire which ordinary prudence would have prevented or put out, or by reason of theft of the car, which could have been prevented by ordinary care on the garage keeper's part, he will be liable for the loss of the car by any of these events. He is not an insurer against loss, and if he keeps a safe house, and uses the care in keeping the car and guarding it which an ordinarily prudent man should use under the same circumstances, he will not be liable, even though burglars should break in and drive it away, or an earthquake should tumble the building down about it and break it up, or a fire should sweep away the garage and destroy its contents.

**Section 1284.—LIABILITY AS A RENTER OF MACHINES.—**The garage keeper is not a common carrier, merely because he keeps machines for hire. But if he lets a car, it then becomes his duty to exercise that degree of care and skill which a prudent man, having regard to the circumstances, would exercise. It is his duty to provide a safe car; he is bound to know the condition of the car he sends out of his garage on hire; and if he sends out a chauffeur with a car he is bound to provide a competent chauffeur. In a business involving the personal safety and lives of others, due care, reasonable diligence, is nothing less than the most watchful care and the most active diligence, and anything short of this is negligence and carelessness. If a garage keeper, therefore, should send out an unsafe car, and it should break down on the road and injure the person to whom he let it, it would be no defense on his part that he did not know that defect in the machine which caused the breakdown. He is bound at all times to know the condition of his machines. It is no excuse for a garage keeper that he did not know of any defect, if he could have known it by reasonable examination and inspection. It is presumed that he can at all times, by examination and inspection of his machines, know their condition; and this being so, it is the same as if he did know it, so far as regards the lessee's right to recover for damages when injured.

**Section 1285.—LIABILITY OF LESSEE FOR CARE OF HIRED AUTOMOBILE.—**The hirer of an automobile is liable to the garage keeper, from whom he hires a machine, for want of reasonable care and skill in driving, and for failure to exercise such prudence and caution as the circumstances require. If a person hires an automobile from a garage, and breaks it up or otherwise damages it by unskillful or reckless driving, leading to a collision or other cause of damage, he will be liable to the garage keeper for whatever damages the latter sustains. If the



garage keeper must be careful in letting a car, it is no less true that the hirer must also be careful in using it.

Babbitt's *The Law Applied to Motor Vehicles*, pages 515, 516.

Section 1286.—LIABILITY FOR REPAIR WORK.—Where a garage keeper maintains a repair shop for motor vehicles, contracting to make repairs generally, rebuilding machines, or supplying new parts or attachments and appliances, he is liable for all defects in the work of repair, whether due to his own want of skill or to that of his workmen. He is bound to do the work contracted for reasonably well, that is, in a workmanlike manner, using such skill and judgment as the undertaking requires, and such as he claims his workmen to possess; making the repairs within the time stipulated without waste or damage to the employer; using the material furnished in a proper manner; and withal exercising good faith in the performance of the work.

Section 1287.—LIEN FOR STORAGE AND REPAIRS.—A garage keeper has a special lien for storage or repair of an automobile, dependent on possession, for the compensation, for any balance which is due to him from the owner for such repairs or storage. If a car is brought into his garage by an agent of the owner, with authority to order repairs, the lien of the garage keeper will also attach to the car. The lien will be for the storage charges, and for reasonable charges for the work done and materials furnished. The statute provides in plain terms, that "keepers of garages for automobiles shall have a lien dependent on possession, for their compensation in caring for and safe keeping of such automobiles." The same statute also provides a lien in favor of any person who makes, alters, or repairs any article of personal property, at the request of the owner, or legal possessor of the property.

Act of the Legislature, approved April 12, 1911.

Section 1288.—POSSESSION ESSENTIAL TO VALIDITY OF LIEN.—To complete the right of lien, it is essential that the possession and right of possession of the automobile should be continued and uninterrupted. A relinquishment of the possession to the owner is an abandonment of the lien, and operates as an immediate release of it. A lien may perhaps be renewed by the return and restitution of the car; but in such cases it would be subordinate to any intervening encumbrance to which the car in the meantime had become subject.

Section 1289.—SALE OF CAR TO SATISFY LIEN.—If the garage keeper is not paid the amount due him for storage or repairs, within twenty days after his bill becomes due, then he may proceed to sell the automobile, at public auction. He must give at least ten days' previous notice of such sale, by advertising in some newspaper published in the county in which such property is situated, or if there be no newspaper published in such county, then by posting notices of the sale in three of the most public places in the town or place where such automobile is to be sold, for ten days previous to the date of the sale. The proceeds of the sale must be applied to the discharge of his lien and the cost of keeping and selling the property; and the remainder, if any, must be paid over to the owner of the car.

Civil Code, Section 3052.

Section 1290.—FORM OF NOTICE OF SALE.—The following is a form of notice of sale by a garage keeper, to be published in a newspaper as directed in the preceding section, or to be posted in three public places if there is no newspaper published in the county where the sale is to be had:

NOTICE OF SALE OF AUTOMOBILE AT PUBLIC AUCTION.—Notice is hereby given that on the ..... day of ....., 19....., at 10 o'clock A. M., at the garage of James & Smith, No. 700 Van Ness

Avenue, in the City and County of San Francisco, State of California, there will be offered for sale and sold at public auction to the highest bidder for cash, payable at the time of the sale, one automobile, which said automobile is particularly described as follows, to-wit:.....

(Here insert full description of the automobile to be sold.)

and that said sale is to be had as aforesaid to satisfy the lien of said James & Smith for the sum of \$....., and costs and expenses of sale, upon said automobile for its storage and repairs thereon.

Dated....., 19.....

JAMES & SMITH.

By.....

Section 1291.—REMOVING AUTOMOBILE SUBJECT TO LIEN.—Any person who surreptitiously or by false pretenses obtains or removes from any garage or repair shop any automobile or other personal property upon which the proprietor or manager thereof would be entitled to a lien, is guilty of a misdemeanor.

Act of the Legislature, approved May 7, 1917;  
in effect July 27, 1917.

A. J. BLEDSOE, ATTORNEY-AT-LAW, Los Angeles, Cal.—General practice in all courts. Office advice, and written opinions by mail. See the title page of this book for office address of A. J. Bledsoe.

## PART XIV.

### TRUST DEEDS.

Section 1292.—EXTENT OF THIS SUBJECT.—It is not intended to include in this subject any of the law about trusts created by last wills, or trusts in personal property, or trusts created by operation of law. It is only intended to give here the most important points about trust deeds of real estate, and particularly about trusts created by deed for the benefit of creditors of the grantor.

Section 1293.—TRUST DEED DEFINED.—A trust deed is a conveyance to a person in trust, to do the things specified in it. The legal title passes to the grantee. A trust creates an obligation upon a person, arising out of a confidence reposed in one who has the legal title to property conveyed to him, that he will faithfully apply and deal with such property according to the confidence reposed, as expressed in the conditions named in the deed.

Section 1294.—TRUST DEED MUST BE IN WRITING.—A trust deed must be in writing, and must be subscribed by the grantor and by the trustee, or by the agent of the trustee authorized by writing.

Civil Code, Section 852.

Section 1295.—PURPOSES FOR WHICH TRUST DEED MAY BE MADE.—Trusts may be created by deed for any of the following purposes:

1. To sell real property, and to apply or dispose of



the proceeds in accordance with the instrument creating the trust.

2. To mortgage or lease real property for the benefit of annuitants or other legatees, or for the purpose of satisfying any charge thereon.

3. To receive the rents and profits of real property, and pay them to or apply them to the use of any person, whether ascertained at the time of the creation of the trust or not, for himself or for his family, during the life of such person, or for any shorter term.

4. To receive the rents and profits of real property and to accumulate the same for the purposes and within the limits named in the deed.

Civil Code, Section 857.

Section 1296.—PROFITS OF LAND LIABLE TO CREDITORS  
Where a trust is created to receive the rents and profits of real property, and no direction for accumulation is given, the surplus of such rents and profits, beyond the sum that may be necessary for the education and support of the person for whose benefit the trust is created, is liable to the claims of the creditors of the beneficiary, and may be garnisheed in the hands of the trustee

Civil Code, Section 859.

Section 1297.—NUMBER OF TRUSTEES.—The law does not limit the number of trustees named in a deed of trust. The grantor may appoint any number he desires.

Section 1298.—ACTION BY TRUSTEES.—Where the trust is vested by the deed in several trustees, they must all unite in the execution of the trust; but, in case any one or more of them is dead, the trust may be executed by the survivors, unless the deed creating the trust directs otherwise.

Civil Code, Section 860.

Section 1299.—BENEFICIARIES TAKE NO TITLE BY DEED. The deed of trust vests the whole estate in the trustees, subject only to the execution of the trust. The beneficiaries take no estate or interest in the property, but may enforce the performance of the trust.

Civil Code, Section 863.

Section 1300.—DEVISE AND TRANSFER OF TRUST PROPERTY.—The grantor in a trust deed may direct to whom the real property to which the trust relates shall belong, in the event of the failure or termination of the trust. He may also transfer the property by deed, or devise it by his will, subject to the execution of the trust. The devisee or grantee of trust property acquires a legal estate in the property, as against all persons except the trustees and those lawfully claiming under them.

Civil Code, Sections 864, 865.

Section 1301.—WHEN BENEFICIARY CANNOT DISPOSE OF HIS INTEREST IN TRUST ESTATE.—Where a trust is created by deed, to pay the beneficiary the rents and profits of real property, or an annuity out of such rents and profits, the deed may lawfully contain the condition that the beneficiary must not dispose of his interest in the trust during his life, or for a term of years.

Civil Code, Section 867.

Section 1302.—POWER OF TRUSTEE.—The trustees have only power to carry out the directions and purposes of the trust. They cannot go outside of the provisions of the deed. Every transfer or other act of the trustees, contrary to the terms of the trust, is absolutely void.

A trustee is a general agent for the trust property. Where there are several co-trustees, all must unite in any act to bind the trust property, unless the deed of trust otherwise provides.

Civil Code, Sections 870, 2258, 2267, 2268.

Section 1303.—LIABILITY FOR BREACH OF TRUST.—A trustee who uses or disposes of the trust property for his own advantage, and not in furtherance of the purposes of the trust deed, must account for all profits so made by him, or pay the value of his use of the trust fund; or, if he has disposed of the trust property, he must replace it, or account for its proceeds, with interest. If a trustee makes an honest mistake in the performance of his duty, but goes outside of his legitimate powers, he is liable to make good to the beneficiary whatever is lost by his error.

Civil Code, Sections 2237, 2238.

Section 1304.—COMPENSATION OF TRUSTEE.—A trustee is entitled to the repayment, out of the trust property, of all expenses actually and properly incurred by him in the performance of his trust. He is entitled to the repayment of even unlawful expenditures, if they were productive of actual benefit to the estate.

Sums expended by a trustee, in payment of taxes, are valid charges on the property, though the deed contains no express authority for such payments. (Decided by the Supreme Court of California, in the case of Savings & Loan Society vs. Burnett, which decision is printed in Volume 39 of the Pacific Reporter, page 922.)

When a deed of trust is silent upon the subject of compensation, the trustee is entitled to the same compensation as an executor. If it specifies the amount of his compensation, he is entitled to the amount thus specified and no more. If it directs that he shall be allowed a compensation, but does not specify the rate or amount, he is entitled to such compensation as may be reasonable under the circumstances. If there are two or more trustees the compensation shall be apportioned among the trustees according to the services rendered by them respectively.

Civil Code, Sections 2273, 2274.

Section 1305.—**TERMINATION OF THE TRUST.**—A trust is extinguished by the entire fulfillment of its object, or by such object becoming impossible or unlawful.

A trust cannot be revoked by the trustor after its acceptance, actual or presumed, by the trustee and beneficiaries, except by the consent of all the beneficiaries, unless the deed of trust reserves a power of revocation to the trustor.

Civil Code, Sections 2279, 2280.

Section 1306.—**DISCHARGE OF TRUSTEE.**—A trustee can be discharged from his trust only as follows:

1. By the extinction of the trust;
2. By the completion of his duties under the trust;
3. By such means as may be prescribed by the deed of trust;
4. By the consent of the beneficiary, if he have capacity to contract;
5. By the judgment of a competent tribunal, in a direct proceeding for that purpose, that he is of unsound mind; or,
6. By the superior court.

The superior court may remove any trustee who has violated or is unfit to execute the trust, or may accept the resignation of a trustee.

Civil Code, Sections 2282, 2283.

Section 1307.—**APPOINTMENT OF TRUSTEE IN CASE OF VACANCY.**—The superior court may appoint a trustee whenever there is a vacancy and the deed of trust does not provide a practicable method of appointment. If the beneficiary of the trust is of the age of fourteen years, he may nominate such trustee, and if such nominee is found competent to discharge the duties, he is entitled to be appointed such trustee in preference to any other person.

Act of the Legislature, approved February 15, 1911.



The deed of trust may provide for some other method of appointing trustees; as a trust deed to secure a note to a bank, providing that the bank may from time to time appoint other trustees on the death of those named in the deed. (Decided by the Supreme Court of California, in the case of *Sacramento Bank vs. Murphy*, which decision is printed in Volume 115 of the *Pacific Reporter*, page 232.)

Section 1308.—SURVIVORSHIP BETWEEN CO-TRUSTEES. On the death, renunciation, or discharge of one of several co-trustees the trust survives to the others.

Civil Code, Section 2288.

Section 1309.—CREDITOR AS TRUSTEE.—A creditor of the grantor may be named in the trust deed as trustee, and may be given the power to sell property and apply the proceeds to payment of the debt. When the debt and expenses of sale are paid, the remainder must go to the grantor. (Decided by the Supreme Court of California, in the case of *Cary vs. Brown*, which decision is printed in Volume 62 of the *California Reports*, page 373.)

Section 1310.—BANK MAY BUY PROPERTY FROM STOCKHOLDER TRUSTEES.—Stockholders of a bank are not the bank, even if they are trustees of a trust deed to the bank; and a sale to the bank by the trustees is not a sale to themselves. If there is a deficiency, after the sale upon a promissory note for which the trust deed was security, an action lies upon it to recover the balance due after crediting the amount received from the sale less the costs of sale. (Decided by the Supreme Court of California, in the case of *Copsey vs. Sacramento Bank*, which decision is printed in Volume 133 of the *California Reports*, page 659.)

Section 1311.—RECONVEYANCE TO GRANTOR.—When the trust is satisfied before the sale of the property, it is

the duty of the trustee to convey the property back to the grantor. Thus, if a trust deed is made of property, with power of sale to dispose of the property and apply the proceeds to the debt of the grantor; if the grantor pays the debt before the trustee sells, the latter cannot keep the property, for the debt is wiped out, and the object of the trust is ended. (Decided by the Supreme Court of California, in the case of Boswick vs. McEvary, which decision is printed in Volume 62 of the California Reports, page 496.)

Section 1312.—**REVOCATION BY DEED.**—Where a trust deed provides that the grantor may revoke the trust by another deed made at a later date, the grantor, if he wishes to take advantage of the provision, must strictly comply with the trust deed. He cannot revoke the trust by his will. (Decided by the Supreme Court of California, in the case of Carpenter vs. Cook, which decision is printed in Volume 60 of the Pacific Reporter, page 475.)

Section 1313.—**POSSESSION OF ESTATE UPON TERMINATION OF TRUST.**—Upon the termination of a trust, that has been created to manage and hold the property for the benefit of another during a limited period, the beneficiary is entitled to the immediate possession and enjoyment of the trust estate, as against all the trustees; and to have their account, as well as the amount of the estate in their hands, settled and determined; and such possession and enjoyment must not be postponed for the purpose of determining the rights of the trustees as between themselves. (Decided by the Supreme Court of California, in the case of Bermingham vs. Wilcox, which decision is printed in Volume 52 of the Pacific Reporter, page 822.)

Section 1314.—**SUIT FOR BALANCE AFTER SALE.**—After a sale under a trust deed securing a note, if the sale does not bring enough to pay the note, a suit may be brought

by the creditor for any unsatisfied balance. (Decided by the Supreme Court of California in the case of Kraft vs. Bryan, which decision is printed in Volume 73 of the Pacific Reporter, page 745.)

Section 1315.—LEASE OF TRUST PROPERTY.—Where the deed creates the trust for a limited period, the trustees have no right to lease the property for a longer period. The lease will end when the trust ends, even if made for a longer term, because the trustees had no power to make a lease for a longer time than the life of the trust estate. (Decided by the Supreme Court of California, in the case of South End Warehouse Co. vs. Lavery, which decision is printed in Volume 107 of the Pacific Reporter, page 1008.)

Section 1316.—SALE OF TRUST PROPERTY.—Where the deed gives the trustees power to sell, they may sell, without any court proceedings whatever. Notice of the sale must be given, in the manner provided by the terms of the deed. The sale must be made in the manner specified in the deed.

There is no foreclosure, and no redemption.

Section 1317.—FORM OF TRUST DEED.—The following is a form of trust deed:

This deed of trust, made this.....day of....., in the year one thousand nine hundred and....., between....., of Alameda County, California, the party of the first part, and....., of San Francisco, California, the party of the second part, and....., of San Francisco, California, the party of the third part, witnesseth: That whereas the said party of the first part has borrowed of the said party of the third part the sum of twenty-five thousand (25,000) dollars, in gold coin of the United States, and has agreed to repay *the same on the*.....day of....., in the year one thousand nine hundred and.....,

to the said party of the third part, in like gold coin with interest according to the terms of a certain promissory note, of even date herewith, executed and delivered therefor by the said party of the first part.

Now this indenture witnesseth, that the said party of the first part, in consideration of the aforesaid indebtedness to the said party of the third part; and for the purpose of securing the payment of said promissory note, and of any sum or sums of money, with interest thereon, that may now or hereafter be paid or advanced by, or may otherwise be due to, the parties of the second or third part under the provisions of this instrument, does by these presents grant unto the party of the second part, and to his successors and assigns, the piece or parcel of land situated in the County of Alameda, and State of California, described as follows:

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(Description.)

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And also, all the interest, or other claim or demand, which the said party of the first part now has or may hereafter acquire of, in and to said premises with the appurtenances.

To have and to hold, the same to the party of the second part and to his successors and assigns upon the trusts and confidence hereinafter expressed, to-wit:

Firstly, during the continuance of these trusts, the party of the second part and the party of the third part, their successors and assigns, are hereby authorized to pay, without previous notice all or any liens, and all or any incumbrances now subsisting, or that may hereafter exist upon said premises (excepting taxes and assessments imposed upon this deed of trust or the money secured hereby) which may in their judgment, affect said premises or these trusts; and they may in their discretion at the expense of said party of the first part, contest the payments of any such liens or encumbrances, or may defend any suit or proceeding that they may consider proper to protect the title to said premises, and may



insure buildings on said premises, and these trusts shall be and continue as security to the party of the third part, and his assigns, for the repayment, in gold coin of the United States, of the money so borrowed by the said party of the first part and the interest thereon, and of all amounts so paid out and costs and expenses incurred, as aforesaid, with interest on such payment at the rate of one per cent per month until final payment.

Secondly, in case the said party of the first part shall well and truly pay, or cause to be paid at maturity, in gold coin as aforesaid, all sums of money so borrowed, as aforesaid, and the interest thereon, and shall upon demand repay all other moneys secured or intended to be secured hereby and also the reasonable expenses of this trust, then the party of the second part, his successors and assigns, shall reconvey all the estate in the premises aforesaid to the party of the first part at his request and cost.

Thirdly, if default shall be made in the payment of any of said sums of principal or interest, when due, in the manner stipulated in said promissory note, or in the reimbursements of any amounts herein provided to be paid, or of any interest thereon, then the said party of the second part, his successors or assigns, on application of the party of the third part, or his assigns, shall sell the above-granted premises, or such part thereof as in his discretion, he shall find it necessary to sell in order to accomplish the objects of these trusts, in the manner following, namely: He shall first publish the time and place of such sale, with a description of the property to be sold, at least once a week for four weeks, in some newspaper published in said County of Alameda, and may from time to time postpone such sale by publication; and on the day of sale so advertised, or any day to which such sale may be postponed, he may sell the property, so advertised, or any portion thereof at public auction, in any county where any part of said property may be situated, to the highest cash bidder; and the holder or holders of said promissory note, his agents or assigns, and the

party of the second part may bid and purchase at such sale.

And the party of the second part, or assigns, shall establish as one of the conditions of such sale, that all bids and payments for said property shall be made in like gold coin as aforesaid, and upon such sale he shall make, execute, and after due payment made, shall deliver to the purchaser or purchasers, his or their heirs and assigns, a deed or deeds of grant, bargain and sale of the above-granted premises, and out of the proceeds thereof shall pay,

First, the expenses thereof, together with the reasonable expenses of this trust, including counsel fees of five hundred dollars, in gold coin, which shall become due upon any default made by the said party of the first part in any of the payments aforesaid.

Second, all sums which may have been paid by the said party of the second or third part, their successors or assigns, or the holders of the note aforesaid, and not reimbursed, and which may then be due, whether paid on account of encumbrances or insurance, as aforesaid, or in the performance of any of the trusts herein created, and with whatever interest may have accrued thereon; next the amount due and unpaid on said promissory note, with whatever interest may have accrued thereon; and lastly the balance or surplus of such proceeds, if any, to said party of the first part, his heirs or assigns.

And in the event of the sale of said premises or any part thereof, and the execution of a deed or deeds therefor, under these trusts, then the recitals therein of default and publication shall be conclusive proof of such default and of the due publication of such notice; and any such deed or deeds with such recitals therein shall be effectual and conclusive against the said party of the first part, his heirs or assigns, and all other persons; and the receipt for the purchase money contained in any deeds executed to the purchaser, as aforesaid, shall be a sufficient discharge to such purchaser from all obligations to see to the proper application of the purchase money, according to the trusts aforesaid.

In witness whereof, we have hereunto set our hands and seals the day and year first above written.

..... (Seal.)

..... (Seal.)

..... (Seal.)

(Acknowledgment in usual form.)

A. J. BLEDSOE, ATTORNEY-AT-LAW, Los Angeles, Cal.—  
General practice in all courts. Office advice, and written  
opinions by mail. See title page of this book for office  
address of A. J. Bledsoe.

## PART XV.

### ASSIGNMENT OF CONTRACTS, GUARANTY OF ACCOUNTS, AND POWER OF ATTORNEY ASSIGNMENT OF CONTRACTS

Section 1318.—WHAT CAN BE ASSIGNED.—All contracts may be assigned, in California, with certain exceptions. The law seeks to do away with restrictions upon the power of the parties to assign their ordinary contracts. But the law does not intend to render assignable all contracts whatever, regardless of their nature or effect, and hence the rule of assignability must be taken with some qualifications.

In the first place, it was not intended to render null an agreement that the parties may have made on the subject. For if the contract itself provides in terms that it is not transferable, it cannot be transferred by an assignment, although it otherwise might be so. Leases, and the tickets usually issued by railroad companies, are familiar instances of this. And if the contract does not in so many words forbid the assignment, yet, if there are equivalent expressions, or language which excludes the idea of performance by another, the contract is not assignable. The question in every case must turn at last upon the intention of the parties.

If a contract provides that it shall not be assigned to a particular person, naming him, it cannot be assigned to that person.

In the next place, although the language used may not show an intention that the contract should not be



assigned, yet the nature of the case may be such that performance by another would be an essentially different thing from that contracted for. Thus, a picture by one artist is an essentially different thing from a picture on the same subject by another artist; and so of a book composed by an author; or any other act or thing where the skill, credit, or other personal quality or circumstance of the party, is a distinctive characteristic of the thing contracted for, or a material inducement of the contract.

Therefore, if a contract comes within either of the qualifications above stated, then it is not assignable. But, if it does not—that is to say, if the language used does not exclude the idea of performance by another; and the nature of the thing contracted for, or the circumstances of the case, do not show that the skill, credit, or other personal quality or circumstance of the party, was a distinctive characteristic of the thing stipulated for or material inducement to the contract—then the contract is assignable under the law of California. (Decided by the Supreme Court of California, in the case of *Larue vs. Groezinger*, which decision is printed in Volume 24 of the *Pacific Reporter*, page 42.)

Section 1319.—ASSIGNMENT WITHOUT CONSENT.—Since a party cannot release himself from an obligation without the consent of the other party, it is only the benefit of a contract which can be assigned. Thus, a contractor for the erection of a building (if not prohibited by the terms of the contract), may assign his contract to another contractor; and if his assignee goes on and completes the contract, he may recover the price from the owner; but the original contractor, his assignor, will still be liable on the contract, unless the owner consents to hold responsible only the assignee. (Decided by the Supreme Court of California, in the case of *Anderson vs. De Urioste*, which decision is printed in Volume 31

of the Pacific Reporter, page 266.)  
Civil Code, Section 1457.

Section 1320.—**VERBAL OR WRITTEN ASSIGNMENTS.**—An assignment of a written contract must be in writing.

An open account, or debt, not evidenced by a contract in writing, may be assigned verbally.

An ordinary contract may be assigned by writing on the back of the contract, or by a more formal and separate paper, at the option of the parties.

Section 1321.—**TIME OF ASSIGNMENT.**—It is immaterial when the assignment is made. An indebtedness due for services may be assigned either before or after the services are completed, and it will be a good assignment. (Decided by the District Court of Appeals, in the case of Union Collection Co. vs. National Fertilizer Co., which decision is printed in Volume 82 of the Pacific Reporter, page 1129.)

Section 1322.—**ASSIGNMENT OF WIFE'S EARNINGS.**—A wife's earnings may be her separate property, by agreement with her husband, or because of her living separate from him; and where this is so, she may assign her claim for wages. (Decided by the District Court of Appeals, in the case of Greve vs. Echo Oil Co., which decision is printed in Volume 96 of the Pacific Reporter, page 904.)

Section 1323.—**ASSIGNMENT OF WAGES.**—An assignment of wages or salary to be earned, under an existing employment, may be made, and will be valid if made in good faith and for a valuable consideration. The assignment will be good, although the assignor works from day to day, and is hired for no specified time, or may work by the piece, and his wages per month vary, and he may be discharged at any time. (Decided by the District Court of Appeals, in the case of Cox vs. Hughes,

which decision is printed in Volume 102 of the Pacific Reporter, page 956.)

Section 1324.—ORDER DRAWN ON DEBTOR.—An order drawn by a creditor on his debtor, for the whole amount of the indebtedness, operates as an equitable assignment of the debt to the payee, and a verbal acceptance of the order by the debtor is valid. (Decided by the Supreme Court of California, in the case of *Joyce vs. Wing Yet Lung*, which decision is printed in Volume 25 of the Pacific Reporter, page 545.)

Section 1325.—NON-NEGOTIABLE CONTRACTS.—A non-negotiable written contract for the payment of money or personal property may be transferred by indorsement, in like manner with negotiable instruments. Such indorsement shall transfer all the rights of the assignor under the instrument to the assignee, subject to all equities and defenses existing in favor of the maker at the time of the indorsement.

Civil Code, Section 1459.

Section 1326.—ASSIGNMENT BY CORPORATION.—The secretary and general manager of a corporation may assign accounts, under a general authorization, the adoption of a special resolution authorizing it being unnecessary. (Decided by the Supreme Court of California, in the case of *Fuller vs. Arnold*, which decision is printed in Volume 33 of the Pacific Reporter, page 445.)

Section 1327.—DAMAGES FOR TORT.—A claim for damages for tort, as, for libel, or slander, or personal injuries by reason of accident, cannot be assigned. A claim, in order to be an assignable claim, must be one which is founded upon a contract.

Section 1328.—FORM OF ASSIGNMENT OF CONTRACT.—The following is a form of assignment, to be annexed to a written contract. If the contract itself is acknowledged, the assignment should be acknowledged.

Know all Men by these Present: That we.....  
 and....., named in the annexed instrument,  
 in consideration of the sum of.....dollars, gold  
 coin of the United States, to us in hand paid by.....  
 and....., of the City and County of  
 San Francisco, and State of California, the receipt where-  
 of is hereby acknowledged, do, by these presents, sell and  
 transfer, to the said.....and.....,  
 their heirs and assigns, the said instrument, and all our  
 right, title, and interest in and to the same, authorizing  
 them in our names, or otherwise, but at their own cost,  
 charge, and expense, to enforce the same according to  
 the tenor thereof, and to take all measures which may  
 be necessary for the recovery of the within instrument.

.....  
 .....  
 Section 1329.—FORM OF INDORSED ASSIGNMENT.—The  
 following is a form of assignment to be indorsed on the  
 back of a contract:

For Value Received, I do hereby transfer and assign,  
 to....., his heirs and assigns forever,  
 all my right, title, and interest, in, to, and under the  
 within instrument.

.....  
 Section 1330.—FORM OF ASSIGNMENT OF DEBT DUE.—  
 The following is a form of assignment of debt due:

Know all Men by these Presents: That I,.....,  
 of....., for and in consideration of the sum  
 of.....dollars, to me paid by.....,  
 of....., the receipt whereof is hereby  
 acknowledged, have sold, and by these presents do sell,  
 assign, transfer, and set over, unto the said.....,  
 a certain debt due from....., amounting  
 to the sum of.....dollars, for goods sold and  
 delivered (or, work, labor, and services), with full power  
 to sue for, collect, and discharge, or sell and assign the  
 same. And I hereby covenant, that the said sum of  
 .....dollars is justly due as aforesaid.



Section 1331.—FORM OF ASSIGNMENT OF ACCOUNT.—The following is a form of assignment of an account, which may be indorsed on the back of the bill:

For Value Received, I hereby sell and assign to \_\_\_\_\_, the within account, which is justly due from the within named \_\_\_\_\_, and I hereby authorize the said \_\_\_\_\_ to collect the same.

Section 1332.—FORM OF ASSIGNMENT OF LEASE.—For a form of assignment of lease, see the subject, “Leases.”

Section 1333.—FORM OF ASSIGNMENT OF MORTGAGE.—For a form of assignment of mortgage, see the subject “Mortgages.”

Section 1334.—FORM OF ASSIGNMENT OF CONTRACT FOR SALE OF REAL ESTATE.—The following is a form of assignment of a contract for the sale of real estate:

Know all Men by these Presents: That I, \_\_\_\_\_, for and in consideration of the sum of \_\_\_\_\_ dollars, gold coin of the United States, to me paid by \_\_\_\_\_, do, by these presents, sell, transfer, assign and set over unto the said \_\_\_\_\_, a contract for the sale of certain real estate, described as follows, to-wit:

(Description.)

which said contract was made and executed by \_\_\_\_\_ to the said \_\_\_\_\_, and bears date the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, to have and to hold the same unto the said \_\_\_\_\_, his heirs, executors, administrators, and assigns; subject, nevertheless, to the covenants, conditions, and payments therein mentioned. And I hereby fully authorize and empower the said \_\_\_\_\_, upon his performance of the said covenants and conditions, to demand and receive the said \_\_\_\_\_, the deed covenanted to be given in the said contract, in the same manner, to all intents and purposes, as I myself might or could do, were these presents not executed.

## GUARANTY OF ACCOUNTS

Section 1335.—**GUARANTY DEFINED.**—A guaranty is a promise to answer for the debt, default, or miscarriage of another person.

A person may become guarantor even without the knowledge or consent of the principal.

Civil Code, Sections 2787, 2788.

Section 1336.—**CONSIDERATION.**—Where a guaranty is entered into at the same time with the original obligation, or with the acceptance of the latter by the guarantee, and forms with that obligation a part of the consideration to him, no other consideration need exist. In all other cases there must be a consideration distinct from that of the original obligation.

Civil Code, Section 2792.

Section 1337.—**GUARANTY MUST BE IN WRITING.**—A guaranty must be in writing, and signed by the guarantor; but the writing need not express a consideration.

There are some cases in which a promise is made to answer for the obligation of another, where the promise is deemed an original obligation of the person making it, and in such cases the promise need not be in writing. But in ordinary cases of guaranty of accounts, where one person promises to answer for the debt of another, the promise must be in writing.

Civil Code, Section 2793.

Section 1338.—**OFFER TO BECOME GUARANTOR.**—A mere offer to become a guarantor is not binding, until notice of its acceptance is communicated by the guarantee to the guarantor; but an absolute guaranty is binding upon the guarantor without notice of acceptance.

Civil Code, Section 2795.

Section 1339.—**GUARANTY THAT AN OBLIGATION IS GOOD OR COLLECTIBLE.**—A guaranty to the effect that an obligation is good, or is collectible, imports that the debtor is solvent, and that the demand is collectible by the usual legal proceedings, if taken with reasonable diligence. Such a guaranty is not discharged by an omission to take proceedings upon the principal debt, or upon any collateral security for its payment, if no part of the debt could have been collected thereby. Where there is such a guaranty, the removal of the principal from the state, leaving no property therein from which the obligation might be satisfied, is equivalent to the insolvency of the principal in its effect upon the rights and obligations of the guarantor.

Civil Code, Sections 2800, 2801, 2802.

Section 1340.—**LIABILITY OF GUARANTOR.**—A guaranty is to be deemed unconditional unless its terms impart some condition precedent to the liability of the guarantor.

A guarantor of payment of an account is liable to the guarantee immediately upon the default of the principal, and without demand or notice. Therefore, if the debtor fails to pay the account at the time agreed upon, the law does not require the creditor to notify the guarantor, or to make any demand upon him; but the creditor may immediately sue the guarantor for the debtor's account.

Civil Code, Sections 2806, 2807.

Section 1341.—**LIABILITY UPON GUARANTY OF A CONDITIONAL OBLIGATION.**—Where one guarantees a conditional obligation, his liability is the same in extent as that of the principal; and he is not entitled to notice of the default of the principal, unless he is unable by reasonable diligence to acquire information of such default, and the creditor has actual notice of his inability to acquire such information.

Civil Code, Section 2808.

Section 1342.—CONTINUING GUARANTY.—A guaranty relating to a future liability of the principal, under successive transactions, which either continue his liability or from time to time renew it after it has been satisfied, is called a continuing guaranty.

A continuing guaranty may be revoked at any time by the guarantor, in respect to future transactions, unless there is a continuing consideration as to such transaction which he does not renounce.

Civil Code, Sections 2814, 2815.

Section 1343.—EXONERATION OF GUARANTORS.—A guarantor is exonerated, except so far as he may be indemnified by the principal, if by any act of the creditor, without the consent of the guarantor, the original obligation of the principal is altered in any respect, or the remedies or rights of the creditor against the principal, in respect thereto, in any way impaired or suspended. A promise by a creditor, which for any cause is void, or voidable by him at his option, does not alter the obligation or suspend or impair the remedy.

The acceptance, by a creditor, of anything in partial satisfaction of an obligation, reduces the obligation of a guarantor thereof, in the same measure as that of the principal, but does not otherwise affect it.

Mere delay on the part of a creditor to proceed against the principal, or to enforce any other remedy, does not exonerate a guarantor.

A guarantor, who has been indemnified by the principal, is liable to the creditor to the extent of the indemnity, notwithstanding that the creditor, without the assent of the guarantor, may have modified the contract or released the principal.

Civil Code, Sections 2819, 2820, 2822, 2823, 2824.

Section 1344.—DEATH OF GUARANTOR.—A guaranty for future advances terminates, when the guarantor dies, and the guarantee has notice of his death. (Decided by



the Supreme Court of California, in the case of Valentine vs. Donohoe-Kelly Banking Co., which decision is printed in Volume 65 of the Pacific Reporter, page 381.)

Section 1345.—JUDGMENT AGAINST PRINCIPAL.—Where a creditor has recovered a judgment against the principal debtor, which remains unsatisfied, a guarantor against whom judgment is recovered on his guaranty is, on payment thereof, entitled to an assignment of the judgment against the principal. (Decided by the Supreme Court of California, in the case of Clark vs. Chapman, which decision is printed in Volume 32 of the Pacific Reporter, page 812.)

Section 1346.—GUARANTY MUST BE CERTAIN.—The writing creating a guaranty must be certain and explicit, so that the intention to guaranty the payment can be plainly seen. For instance, if one person should receive a letter from another, making inquiry regarding the financial standing of a third person, and should answer, "You may rest assured that you will get your pay for all work done," this would not be a guaranty, because it would not contain any promise to stand good for the debts of that person. The letter would be merely an expression of opinion. To constitute a guaranty, there would have to appear in it some promise to answer for the debt or default of another. (Decided by the Supreme Court of California, in the case of Switzer vs. Baker, which decision is printed in Volume 30 of the Pacific Reporter, page 761.)

Section 1347.—FORM OF GUARANTY OF ACCOUNT.—The following is a form of guaranty of account:

San Francisco, Cal.,

....., 19.....

To Jones & Smith,

402 Market Street,

San Francisco, Cal.

Gentlemen: I hereby guaranty to you the account of Henry Green, for goods purchased by him, or for work

and labor performed for him, during the term of six months from date hereof and up to the amount of..... dollars. This guaranty is made upon the consideration of.....dollars to me in hand paid by the said Henry Green.

## POWER OF ATTORNEY

Section 1348.—POWER OF ATTORNEY MUST BE IN WRITING.—A power of attorney must be in writing, and subscribed by the grantor, or his agent. If subscribed by an agent of the grantor, the agent's authority to sign must be in writing. If it is intended to be recorded, it must be acknowledged.

Code of Civil Procedure, Section 1971.

Section 1349.—MARRIED WOMAN'S POWER OF ATTORNEY.—A married woman may make, execute, and revoke powers of attorney for the sale, conveyance, or encumbrance of her real or personal estate, which shall have the same effect as if she were unmarried, and may be acknowledged in the same manner as a grant of real property.

Civil Code, Section 1094.

Section 1350.—SIGNATURE OF ATTORNEY IN FACT.—When an attorney in fact executes an instrument transferring an estate in real property, he must subscribe the name of his principal to it, and his own name as attorney in fact.

Civil Code, Section 1095.

Section 1351.—REVOCATION OF POWER OF ATTORNEY.—No instrument containing a power to convey or execute instruments affecting real property, which has been recorded, is revoked by any act of the party by whom it was executed, unless the instrument containing such revocation is also acknowledged or proved, certified and

recorded, in the same office in which the instrument containing the power was recorded.

Civil Code, Section 1216.

Section 1352.—REVOCATION OF POWER OF AN AGENT.—Unless the power of an agent is coupled with an interest in the subject of the agency, it is terminated, as to every person having notice thereof, by:

1. Its revocation by the principal;
2. His death; or,
3. His incapacity to contract.

Civil Code, Section 2356.

Section 1353.—POWER OF ATTORNEY COUPLED WITH AN INTEREST.—Where the power of attorney covers property in which the grantee has an interest, the power is not revoked by the death of the principal.

Section 1354.—FORM OF GENERAL POWER OF ATTORNEY. The following is a form of general power of attorney: Know all Men by these Presents:

That we, ..... and ..... of the city and county of San Francisco, state of California, have made, constituted and appointed, and by these presents do make, constitute, and appoint....., of said city and county, our true and lawful attorney for us and in our names, place, and stead, and for our use and benefit, to ask, demand, sue for, recover, collect and receive all such sums of money, debts, dues, accounts, legacies, bequests, interests, dividends, annuities and demands whatsoever as are now or shall hereafter become due, owing, payable or belonging to us, and have, use and take all lawful ways and means in our names or otherwise for the recovery thereof, by attachments, arrests, distress or otherwise, and to compromise and agree for the same, and acquittances or other sufficient discharges for the same, for us, and in our names, to make, seal, and deliver; to bargain, contract, agree for, purchase, receive, and take lands, tenements, hereditaments,

and accept the seisin and possession of all lands, and all deeds and other assurances, in the law therefor, and to lease, let, demise, bargain, sell, remise, release, convey, mortgage and hypothecate lands, tenements and hereditaments, upon such terms and conditions, and under such covenants, as he shall think fit. Also, to bargain and agree for, buy, sell, mortgage, hypothecate and in any and every way and manner deal in and with goods, wares, and merchandise, chose in action and other property in possession or in action, and to make, do, and transact all and every kind of business of what nature or kind soever, and also for us and in our names, and as our act and deed, to sign, seal, execute, deliver and acknowledge such deeds, leases and assignment of leases, covenants, indentures, agreements, mortgages, hypothecations, bottomries, charter-parties, bills of lading, bills, bonds, notes, receipts, evidences of debts, releases and satisfaction of mortgage, judgments and other debts, and such other instruments in writing of whatever kind and nature as may be necessary or proper in the premises.

Giving and granting unto our said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as we might or could do if personally present, and with full power of substitution or revocation, hereby ratifying and confirming all that our said attorney, or his substitute or substitutes, shall lawfully do or cause to be done by virtue of these presents.

In witness whereof we have hereunto set our hands and seals the.....day of....., 19......

.....(Seal.)

.....(Seal.)

(Acknowledgment in usual form.)

Section 1355.—SPECIAL POWER OF ATTORNEY.—The fol-

lowing is a form of special power of attorney:

Know all Men by these Presents:

That I, ....., of the county of Alameda, state of California, have made, constituted, and appoint-



ed, and by these presents do make, constitute, and appoint  
 ....., of .....,  
 my true and lawful attorney for me and in my name,  
 place, and stead, and for my use, to ask, demand, sue for,  
 collect, and receive all such sums of money which are or  
 which shall be due, owing, payable, and belonging to me,  
 or detained from me, in any manner whatsoever, by any  
 person or persons whatsoever.

Giving and granting unto my said attorney full power  
 and authority in and about the premises; and to use all  
 due means, course and process in the law for the full,  
 effectual, and complete execution thereof, and in my  
 name to make, execute and deliver all and every instru-  
 ment in writing under seal, or otherwise, and for the  
 premises to appear and my person to represent before  
 any governor, judge, officer, and minister of the law  
 whatsoever, and in any court or courts of judicature, and  
 on my behalf, to prosecute for debt, fraud and any man-  
 ner of claims I may have against any person or persons,  
 and to answer, defend, and reply unto all actions, causes,  
 matters, and things whatsoever relating to the premises.  
 Also, to submit any matter in dispute respecting the  
 premises to arbitration or reference. And generally to  
 say, do, act, transact, determine, accomplish and finish all  
 matters and things whatsoever relating to the premises,  
 as fully, amply, and effectually, to all intents and pur-  
 poses, as I might or could do if personally present, with  
 full power of substitution or revocation, hereby ratify-  
 ing, confirming, and holding valid all that my said attor-  
 ney, or his substitute or substitutes, shall lawfully do or  
 cause to be done by virtue of these presents.

In witness whereof, I have hereunto set my hand and  
 seal this.....day of....., 19.....

.....  
 (Acknowledgment in the usual form.)

Section 1356.—COMMERCIAL POWER OF ATTORNEY,  
 WITH AUTHORITY TO SELL REAL ESTATE.—Cowdery's Book  
 of Forms, which lawyers use in practice, contains a form  
 of commercial power of attorney, also giving authority

to sell real estate. This form is given below. It appears to have been carefully prepared:

Know All Men by these Presents:

That I, \_\_\_\_\_, of the County of Santa Clara, State of California, have made, constituted, and appointed, and by these presents do make, constitute and appoint \_\_\_\_\_, of the County of Alameda, State of California, my true and lawful attorney, for me, and in my name, and on my behalf, to ask, demand, recover and receive, all and any sum or sums of money, debts, dues, merchandise, or effects, due, payable, coming, or belonging, or which may at any time be due, payable, or belonging to me, from any person or persons whatsoever; to sell all, or any part, of said goods, merchandise and effects, which may come to his possession or knowledge, on such credit, and for such prices as he may deem meet; to purchase any goods, merchandise, specie, currency, mining or other kinds of stock or other commodities, on my account for such prices and to such amount as he may deem meet, and the same to sell again for my benefit and on my account, for any prices whatsoever, to ship or transport the same, or any part thereof, on my behalf and account, to any port or ports, place or places, whatsoever, in any vessel or vessels, and with and to any person or persons whatsoever, and there barter, exchange, and dispose of the same; to insure and cause insurance to be made, of any such goods, merchandise, specie or other commodities, or of any part thereof, at such premiums, and for such risks as he may deem meet; to accept any bill or bills of exchange or orders, make and execute any note or notes of hand, bond or bonds, or other instruments or contracts, in my name, and on my account, to and for any amount which he may deem meet or expedient; to sell, barter, exchange, or dispose of any real estate of which I am now seized or possessed in fee simple, or for any less estate, to any person or persons, for any price, or in any manner whatsoever, and for these purposes to execute and acknowledge any deed or deeds, lease or leases, or other assurance or assurances, with general covenants of warranty against all persons, or any other covenants whatsoever, as he may

deem expedient; to purchase any real estate on my account, in fee simple or otherwise, at any price of any exchange whatsoever, and for these purposes to receive, confirm, make, and execute, any contracts, deeds, conveyances, or other instruments whatsoever; to settle and adjust all partnership accounts and demands, and all other accounts or demands now subsisting, or which may hereafter subsist between me and any person or persons whatsoever, and submit the same to and decide them by arbitration; to compound for any debts, dues, or demands owing, or which may hereafter be owing to me, and to take less than the whole, or otherwise to agree for the same, in such manner, and on such terms as he, in his discretion, may deem proper; and for all and any of these purposes, to make and execute any releases, compromises, compositions, agreements, or contracts, by deed or otherwise, in his opinion necessary and expedient in the premises; to pay and discharge all debts and demands due and payable, or which may hereafter become due and payable by me unto any person or persons whatsoever; to enter into any lands or other real estate to which I am or may be entitled, and to recover the possession thereof, and damages for any injury done thereto, and to distrain for rent due thereon, and also to commence and prosecute unto final judgment and execution, any suit or suits, action or actions, real, personal, or mixed, which he shall deem proper for the recovery, possession, or enjoyment of any matter or thing which is or which may hereafter be due, payable, owing, belonging, accruing, or appertaining to me, for or by reason of the premises, or any part thereof, and, in any such suits or actions, for me in person, or by such attorney or attorneys, or counsel, he may deem necessary or proper to retain or employ to appear and plead, before any courts or tribunals having jurisdiction thereof, and all stipulations, undertakings, recognizances and other requisites in any suits or actions, and any question arising on the same, by arbitration or other compromise, and of all receipts and recoveries in the premises, due acquittances and discharges to execute and deliver, and generally to

do and perform all matters and things, transact all business, make, execute and acknowledge all contracts, orders, deeds, mortgages, satisfaction of mortgages, leases and assignments of the same, and all other writing, assurances, and instruments of every kind, which may be requisite or proper to effectuate all or any of the premises, or any other matter or thing appertaining or belonging to me, with the same powers, and to all intents and purposes, with the same validity as I could, if personally present (giving and granting unto my said attorney, full power to substitute one or more attorneys under him, my said attorney, in or concerning the premises, or any part thereof, and the same at his pleasure to revoke); and hereby ratifying and confirming whatsoever my said attorney (or, his substitute or substitutes) shall and may do, by virtue hereof, in the premises.

In witness whereof, I have hereunto set my hand and seal this.....day of....., 19.....  
.....(Seal.)

(Acknowledgment in usual form.)

A. J. BLEDSOE, ATTORNEY-AT-LAW, Los Angeles, Cal.—  
Written opinions, at office, or sent by mail, upon legal problems submitted by clients. See title page of this book for office address of A. J. Bledsoe.



## PART XVI.

### WORKMEN'S COMPENSATION LAW.

Section 1356.—The Workmen's Compensation Act, passed in 1917 and amended in 1919, is intended to provide a complete system of workmen's compensation for the State of California. It is not printed here in full, but only such sections of the act as will probably be required for quick and ready reference.

(a) *Employer's Liability*.—Sec. 6. Liability for the compensation provided by this act, in lieu of any other liability whatsoever to any person, shall, without regard to negligence, exist against an employer for any injury sustained by his employees arising out of and in the course of the employment and for the death of any such employee if the injury shall proximately cause death, in those cases where the following conditions of compensation concur:

(1) Where, at the time of the injury, both the employer and employee are subject to the compensation provisions of this act.

(2) Where, at the time of the injury, the employee is performing service growing out of and incidental to his employment and is acting within the course of his employment.

(3) Where the injury is proximately caused by the employment, either with or without negligence, and is not caused by the intoxication of the injured employee, or is not intentionally self-inflicted.

(4) Where the injury is caused by the serious and willful misconduct of the injured employee, the compen-

sation otherwise recoverable by him shall be reduced one-half; *provided, however*, that such misconduct of the employee shall not be a defense to the claim of the dependents of said employee, if the injury results in death, or to the claim of the employee if the injury results in a permanent partial disability equaling or in excess of seventy per cent of total; *and provided, further*, that such misconduct of said employee shall not be a defense where his injury is caused by the failure of the employer to comply with any provision of law, or any safety order of the commission, with reference to the safety of places of employment; *and provided, further*, that in case of an injury suffered by an employee under sixteen years of age, it shall be conclusively presumed that such injury was not caused by serious and willful misconduct.

Act of the Legislature, approved May 22, 1919;  
in effect July 22, 1919.

Where such conditions of compensation exist, the right to recover such compensation, pursuant to the provisions of this act, shall be the exclusive remedy against the employer for the injury or death; *provided*, that where the employee is injured by reason of the serious and willful misconduct of the employer, or his managing representative, or if the employer be a partnership, on the part of one of the partners, or if a corporation, on the part of an executive or managing officer or general superintendent thereof, the amount of compensation otherwise recoverable for injury or death, as hereinafter provided, shall be increased one-half, any of the provisions of this act as to maximum payments or otherwise to the contrary notwithstanding; *provided, however*, that said increase of award shall in no event exceed twenty-five hundred dollars.

Act of the Legislature, approved May 22, 1919;

In all other cases where the conditions of compensation do not concur, the liability of the employer shall be the same as if this act had not been passed.

*Workmen Under Partnership Agreements.*—Workmen associating themselves under a partnership agreement, the principal purpose of which is the performance of the labor on a particular piece of work, shall be deemed employees of the person having such work executed, and, in the event the average weekly earnings are not otherwise ascertainable, shall be deemed to be employed at an average weekly wage of twelve dollars; *provided, however,* that if such workmen shall have taken out and maintained in full force and effect insurance, in an insurance carrier as defined in this act, insuring to themselves and all persons employed by them benefits identical with those conferred by this act, the person for whom such work is to be done shall not be liable as an employer under this act.

(b) *Payment.*—Sec. 9. Where liability for compensation under this act exists, such compensation shall be furnished or paid by the employer and be as provided in the following schedule:

(a) Such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches and apparatus, including artificial members, as may reasonably be required to cure and relieve from the effects of the injury, the same to be provided by the employer, and in case of his neglect or refusal seasonably to do so, the employer to be liable for the reasonable expense incurred by or on behalf of the employee in providing the same; *provided,* that if the employee so requests, the employer shall tender him one change of physicians and shall nominate at least three additional practicing physicians competent to treat the particular case, or as many as may be available if three cannot reasonably be named, from whom the employee may choose; the employee shall also be entitled, in any serious case, upon request, to the services of a consulting physician to be provided by the employer; all of said treatment to be at the expense of the employer. If the

employee so requests, the employer must procure certification by the commission or a commissioner of the competency for the particular case of the consulting or additional physicians; *provided, further*, that the foregoing provisions regarding a change of physicians shall not apply to those cases where the employer maintains, for his own employees, a hospital and hospital staff, the adequacy and competency of which have been approved by the commission. Nothing contained in this section shall be construed to limit the right of the employee to provide, in any case, at his own expense, a consulting physician or any attending physicians whom he may desire. Controversies between employer and employee, arising under this section, shall be determined by the Industrial Accident Commission, upon the request of either party.

*Time of Disability Payments.*—If the injury causes temporary disability, a disability payment which shall be payable for one week in advance as wages on the eighth day after the injured employee leaves work as a result of the injury. If the injury causes permanent disability, a disability payment which shall be payable for one week in advance as wages on the eighth day after the injury. Such indemnity shall thereafter be payable on the employer's regular pay day, but not less frequently than twice in each calendar month, unless otherwise ordered by the commission, subject, however, to the following limitations:

(1) *Disability Less Than Seven Days.*—If the period of disability does not last longer than seven days from the day the employee leaves work as the result of the injury, no disability payment whatever shall be recoverable.

(2) *No Recovery for First Seven Days.*—If the period of disability lasts longer than seven days from the day the employee leaves work as the result of the injury, no disability payment shall be recoverable for the first seven days of disability suffered.



The disability payment shall be as follows:

(1) *Amount of Disability Payments.*—If the injury causes temporary total disability, sixty-five per cent of the average weekly earnings during the period of such disability, consideration being given to the ability of the injured employee to compete in an open labor market;

(2) If the injury causes temporary partial disability, sixty-five per cent of the weekly loss in wages during the period of such disability;

(3) If the temporary disability caused by the injury is at times total and at times partial, the weekly disability payment during the period of each such total or partial disability shall be in accordance with paragraphs one and two of this subdivision respectively;

(4) *Aggregate Disability Payments.*—Paragraphs one, two, and three of this subdivision shall be limited as follows: Aggregate disability payments for a single injury causing temporary disability shall not exceed three times the average annual earnings of the employee, nor shall the aggregate disability period for such temporary disability in any event extend beyond two hundred forty weeks from the date of the injury.

(5) *Computation of Payments When Disability Permanent.*—If the injury causes permanent disability, the percentage of disability to total disability shall be determined and the disability payment computed and allowed as follows: For a one per cent disability, sixty-five per cent of the average weekly earnings for a period of four weeks; for a ten per cent disability, sixty-five per cent of the average weekly earnings for a period of forty weeks; for a twenty per cent disability, sixty-five per cent of the average weekly earnings for a period of eighty weeks; for a thirty per cent disability, sixty-five per cent of the average weekly earnings for a period of one hundred twenty weeks; for a forty per cent disability, sixty-five per cent of the average weekly earnings for a period of one hundred sixty weeks; for a fifty per cent disability,

sixty-five per cent of the average weekly earnings for a period of two hundred weeks; for a sixty per cent disability, sixty-five per cent of the average weekly earnings for a period of two hundred forty weeks; for a seventy per cent disability, sixty-five per cent of the average weekly earnings for a period of two hundred forty weeks, and thereafter ten per cent of such weekly earnings during the remainder of life; for an eighty per cent disability, sixty-five per cent of the average weekly earnings for a period of two hundred forty weeks and thereafter twenty per cent of such weekly earnings during the remainder of life; for a ninety per cent disability, sixty-five per cent of the average weekly earnings for a period of two hundred forty weeks and thereafter thirty per cent of such weekly earnings during the remainder of life; for a hundred per cent disability, sixty-five per cent of the average weekly earnings for a period of two hundred forty weeks, and thereafter forty per cent of such weekly earnings during the remainder of life.

(6) The payment for permanent disabilities intermediate to those fixed by the foregoing schedule shall be computed and allowed as follows: If under seventy per cent, sixty-five per cent of the average weekly earnings for four weeks for each one per cent of disability; if seventy per cent or over, sixty-five per cent of the average weekly earnings for two hundred forty weeks and thereafter one per cent of such weekly earnings for each one per cent of disability in excess of sixty per cent to be paid during the remainder of life.

(7) In determining the percentages of permanent disability, account shall be taken of the nature of the physical injury or disfigurement, the occupation of the injured employee, and his age at the time of such injury, consideration being given to the diminished ability of such injured employee to compete in an open labor market.

(8) Where an injury causes both temporary and permanent disability, the injured employee shall not be

entitled to both a temporary and permanent disability payment, but only to the greater of the two.

(9) *Permanent Disabilities Presumed to Be Total.*—The following permanent disabilities shall be conclusively presumed to be total in character: Loss of both eyes or the sight thereof; loss of both hands or the use thereof; an injury resulting in a practically total paralysis; an injury to the brain resulting in incurable imbecility or insanity. In all other cases, permanent total disability shall be determined in accordance with the fact.

(10) The percentage of permanent disability caused by any injury shall be so computed as to cover the permanent disability caused by that particular injury without reference to any injury previously suffered or any permanent disability caused thereby.

(11) *Schedule for Determination of Permanent Disabilities.*—The commission may prepare, adopt, and from time to time amend, a schedule for the determination of the percentages of permanent disabilities, such table to be based upon the proper combinations of the factors indicated in subdivision seven above. Such schedule shall be available for public inspection and without formal introduction in evidence shall be prima facie evidence of the percentage of permanent disability to be attributed to each injury covered by said schedule.

3. The death of an injured employee shall not affect the liability of the employer under subsections (a) and (b) of this section, so far as such liability has accrued and become payable at the date of the death, and any accrued and unpaid compensation shall be paid to the dependents, if any, or, if there are no dependents, to the personal representative of the deceased employee or heirs or other persons entitled thereto, without administration, but such death shall be deemed to be the termination of the disability.

(c) *Death Benefits.*—If the injury causes death, either with or without disability, the burial expense of the de-

ceased employee as hereinafter limited and a death benefit which shall be payable in installments equal to sixty-five per cent of the average weekly earnings of the deceased employee, upon the employer's regular pay day, but not less frequently than twice in each calendar month, unless otherwise ordered by the commission, which death benefit shall be as follows:

(1) *If Deceased Employee Leaves Dependents.*—In case the deceased employee leaves a person or persons wholly dependent upon him for support, such dependents shall be allowed the reasonable expense of his burial, not exceeding one hundred dollars, and a death benefit, which shall be a sum sufficient, when added to the disability indemnity which at the time of death has accrued and become payable, under the provisions of subsection (b) hereof, and the said burial expense, to make the total disability indemnity, cost of burial and death benefit equal to three times his average annual earnings, such average annual earnings to be taken at not less than three hundred thirty-three dollars and thirty-three cents nor more than one thousand six hundred sixty-six dollars and sixty-six cents.

(2) *If Deceased Employee Leaves Persons Partially Dependent.*—In case the deceased employee leaves no person wholly dependent upon him for support, but one or more persons partially dependent therefor, the said dependents shall be allowed the reasonable expense of his burial, not to exceed one hundred dollars, and, in addition thereto, a death benefit which shall amount to three times the annual amount devoted by the deceased to the support of the person or persons so partially dependent; *provided*, that the death benefit shall not be greater than a sum sufficient, when added to the disability indemnity which, at the time of the death, has accrued and become payable under the provisions of subsection (b) hereof, together with the cost of the burial of such deceased employee, to make the total disability indemnity, cost of burial and



death benefit equal to three times his average annual earnings, such average annual earnings to be taken at not less than three hundred thirty-three dollars and thirty-three cents nor more than one thousand six hundred sixty-six dollars and sixty-six cents.

(3) *If No Dependants*.—If the deceased employee leaves no person dependent upon him for support, the death benefit shall consist of the reasonable expense of his burial not exceeding one hundred dollars, and such other benefit as may be provided by law.

(d) Payment of compensation in accordance with the order and direction of the commission shall discharge the employer from all claims therefor.

(e) *Average Annual Earnings*.—Sec. 12. (a) The average annual earnings referred to in section nine hereof shall be fifty-two times the average weekly earnings referred to in said section; in computing such earnings the average weekly earnings shall be taken at not less than six dollars and forty-one cents nor more than thirty-two dollars and five cents, and three times the average annual earnings shall be taken at not less than one thousand dollars nor more than five thousand dollars, and between said limits said average weekly earnings shall be arrived at as follows:

(1) *Average Weekly Earnings*.—If the injured employee has worked in the same employment, whether for the same employer or not, during at least two hundred sixty days of the year preceding his injury, his average weekly earnings shall consist of ninety-five per cent of six times the daily earnings at the time of such injury where the employment is for six full working days a week. Where his employment is for five, five and one-half, six and one-half or seven working days a week, the average weekly earnings shall be ninety-five per cent of five, five and one-half, six and one-half or seven times the daily earnings at the time of the injury, as the case may be.

(2) If the injured employee has not so worked in such employment during at least two hundred sixty days of such preceding year, his average weekly earnings shall be based upon the daily earnings, wage or salary of an employee of the same class working at least two hundred sixty days of such preceding year in the same or a similar kind of employment in the same or a neighboring place, computed in accordance with the provisions of the preceding subdivision.

(3) If the earnings be irregular or specified to be by the week, month, or other period, then the average weekly earnings mentioned in subdivisions (1) and (2) above shall be ninety-five per cent of the average earnings during such period of time, not exceeding one year, as may conveniently be taken to determine an average weekly rate of pay.

(4) *When Less Than 5 Days or Seasonal.*—Where the employment is for less than five days per week or is seasonal or where for any reason the foregoing methods of arriving at the average weekly earnings of the injured employee cannot reasonably and fairly be applied, such average weekly earnings shall be taken at ninety-five per cent of such sum as shall reasonably represent the average weekly earning capacity of the injured employee at the time of his injury, due consideration being given to his actual earnings from all sources and employments during the year preceding his injury; *provided*, that the earnings from other occupations shall not be allowed in excess of the rate of wages paid at the time of the injury.

(b) *Overtime, Board, Etc.*—In determining such average weekly earnings, there shall be included overtime and the market value of board, lodging, fuel, and other advantages received by the injured employee, as part of his remuneration, which can be estimated in money, but such average weekly earnings shall not include any sum which the employer may pay to the injured employee to cover any special expenses entailed on him by the nature

of his employment.

(c) *If Injured Employee Is Under 21.*—If the injured employee is under twenty-one years of age, and his incapacity is permanent, his average weekly earnings shall be deemed, within the limits fixed, to be the weekly sum that under ordinary circumstances he would probably be able to earn after attaining the age of twenty-one years, in the occupation in which he was employed at the time of the injury or in any occupation to which he would reasonably have been promoted if he had not been injured, and if such probable earnings after attaining the age of twenty-one years cannot reasonably be determined, such average weekly earnings shall be based upon three dollars a day for a six-day week.

(d) *Weekly Loss in Wages in Case of Temporary Partial Disability.*—Sec. 13. The weekly loss in wages in case of temporary partial disability shall consist of the difference between the average weekly earnings of the injured employee, computed according to the provisions of section nine, and the weekly amount which the injured employee will probably be able to earn during the disability, to be determined in view of the nature and extent of the injury. In computing such probable earnings due regard shall be given to the ability of the injured employee to compete in an open labor market. If evidence of exact loss of earnings be lacking, such weekly loss in wages may be computed from the proportionate loss of physical ability or earning power caused by the injury.

(e) *Who Are Deemed Wholly Dependent.*—Sec. 14. (a) The following shall be conclusively presumed to be wholly dependent for support upon a deceased employee, but these presumptions do not apply to aliens, non-residents of the United States, at the time of the injury:

(1) A wife upon a husband with whom she was living at the time of his death, or for whose support such husband was legally liable at the time of his injury.

(2) A child or children under the age of eighteen years, or over said age, but physically or mentally incapacitated from earning, upon the parent with whom he or they are living at the time of the injury of such parent for whose maintenance such parent was legally liable at the time of injury, there being no surviving dependent parent.

(b) In all other cases, questions of entire or partial dependency and questions as to who constitute dependents and the extent of their dependency shall be determined in accordance with the fact, as the fact may be at the time of the injury of the employee.

(c) No person shall be considered a dependent of any deceased employee unless in good faith a member of the family or household of such employee, or unless such person bears to such employee the relation of husband or wife, child, posthumous child, adopted child or stepchild, father or mother, father-in-law or mother-in-law, grandfather or grandmother, brother or sister, uncle or aunt, brother-in-law or sister-in-law, nephew or niece.

(d) 1. If there is one or more persons wholly dependent for support upon a deceased employee, such person or persons shall receive the entire death benefit, and any person or persons partially dependent shall receive no part thereof.

2. If there is more than one such person wholly dependent for support upon a deceased employee, the death benefit shall be divided equally among them.

3. If there is more than one person partially dependent for support upon a deceased employee, and no person wholly dependent for support, the amount allowed as a death benefit shall be divided among the persons so partially dependent in proportion to the relative extent of their dependency.

(e) The commission may, anything in this act contained to the contrary notwithstanding, set apart or reassign the death benefit to any one or more of the depend-



ents in accordance with their respective needs and as may be just and equitable, and may order payment to a dependent subsequent in right, or not otherwise entitled, upon good cause being shown therefor. Such death benefit shall be paid to such one or more dependents of the deceased or to a trustee appointed by the commission or a commissioner for the benefit of the person or persons entitled, as may be determined by the commission. The person to whom the death benefit is paid for the use of the several beneficiaries shall apply the same in compliance with the findings and directions of the commission. In the event of the death of a dependent beneficiary of any deceased employee, if there be no surviving dependent, the death of such dependent shall terminate the death benefit, which shall not survive to the estate of such deceased dependent, except that payments of such death benefit accrued and payable at the time of the death of such sole remaining dependent shall be paid upon the order of the commission to the heirs of such dependent or, if none, to the heirs of the deceased employee, without administration.

(f) *Notice to Employer.*—Sec. 15.—No claims to recover compensation under this act shall be maintained unless within thirty days after the occurrence of the injury which is claimed to have caused the disability or death, notice in writing, stating the name and the address of the person injured, the time and the place where the injury occurred, and the nature of the injury, and signed by the person injured or some one in his behalf, or in case of his death, by a dependent or some one in his behalf, shall be served upon the employer; *provided, however*, that knowledge of such injury, obtained from any source, on the part of such employer, his managing agent, superintendent, foreman, or other person in authority, or knowledge of the assertion of a claim of injury sufficient to afford opportunity to the employer to make an investigation into the facts, shall be equivalent to such service; *and provided, further*,

that the failure to give any such notice, or any defect or inaccuracy therein, shall not be a bar to recovery under this act if it is found as a fact in the proceedings for the collection of the claim that there was no intention to mislead or prejudice the employer in making his defense, and that he was not in fact so misled or prejudiced thereby.

(g) *Medical Examination of Employee.*—Sec. 16. (a) Whenever the right to compensation under this act would exist in favor of any employee, he shall, upon the written request of his employer, submit from time to time, as may be reasonable, to examination by a practicing physician, who shall be provided and paid for by the employer, and shall likewise submit to examination from time to time by any physician selected by the commission or any member or referee thereof.

(b) The request or order for such examination shall fix a time and place therefor, due consideration being given to the convenience of the employee and his physical condition and ability to attend at the time and place fixed. The employee shall be entitled to have a physician provided and paid for by himself present at any examination required by his employer. So long as the employee, after such written request of the employer, shall fail or refuse to submit to such examination or shall in any way obstruct the same, his right to begin or maintain any proceeding for the collection of compensation shall be suspended; and if he shall fail or refuse to submit to examination after direction by the commission, or any member or referee thereof, or shall in any way obstruct the same, his right to the disability payments which shall accrue during the period of such failure, refusal or obstruction, shall be barred. Any physician who shall make or be present at any such examination may be required to report or testify as to the results thereof.

(h) *Hearing on Disputes.*—Sec. 17. (a) Upon the filing with the commission by any party in interest of an

application in writing stating the general nature of any dispute or controversy concerning compensation, or concerning any right or liability arising out of, or incidental thereto, jurisdiction over which is vested by this act in the commission, a time and place shall be fixed for the hearing thereof, which hearing, unless otherwise agreed to by all the parties thereto, must be held not less than ten days nor more than thirty days after the filing of such application.

(i) *Claim Not Assignable.*—Sec. 24. (a) No claim for compensation shall be assignable before payment, but this provision shall not affect the survival thereof, nor shall any claim for compensation, or compensation awarded, adjudged or paid, be subject to be taken for the debts of the party entitled to such compensation, except as hereinafter provided. No compensation, whether awarded or voluntarily paid, shall be paid to any attorney at law or in fact or other agent, but shall be paid directly to the claimant entitled to the same, unless otherwise ordered by the commission. Any payment made to such attorney at law or in fact or other agent in violation of the provisions of this section shall not be credited to the employer.

(b) *Lien Against Amount Due as Compensation.*—The commission may fix and determine and allow as a lien against any amount to be paid as compensation:

(1) A reasonable attorney's fee for legal services pertaining to any claim for compensation or application filed therefor and the reasonable disbursements in connection therewith.

(2) The reasonable expense incurred by or on behalf of the injured employee.

(3) The reasonable value of the living expenses of an injured employee, or of his dependents, subsequent to the injury.

(4) The reasonable burial expenses of the deceased employee, not to exceed the sum of one hundred dollars.

(5) The reasonable living expenses of the wife or

minor children of the injured employee, or both, subsequent to the date of the injury, where such employee has deserted or is neglecting his family, to be allowed in such proportion as the commission shall deem proper, upon application of the wife or guardian of the minor children.

(c) *Notice of Claim.*—If notice in writing be given to the employer setting forth the nature and extent of any claim that may be allowed as a lien, the said claim shall be a lien against any amount thereafter to be paid as compensation, subject to the determination of the amount and approval thereof by the commission.

(j) *Liability of Principal Employers and Contractors.*  
Sec. 25. The liability of principal employers and contracting employers, general or intermediate, for compensation under this act, when other than the immediate employer of the injured employee, shall be as follows:

(a) When any such employer undertakes to do, or contracts with another to do, or to have done, any work, either directly or through contractors or subcontractors, then such principal employer or contracting employer shall be liable to pay to any employee injured while engaged in the execution of such work, or to his dependents in the event of his death, or to any other person, any compensation which the immediate employer is liable to pay, and the commission shall have jurisdiction to determine all controversies arising under this section.

(b) The person entitled to such compensation shall have the right to recover the same directly from his immediate employer, and in addition thereto the right to enforce in his own name, in the manner provided by this act, the liability for compensation imposed upon other persons by this section, either by making such other persons parties to the original application or by filing a separate application; *provided, however*, that payment in whole or in part of such compensation by either the immediate employer or other person shall, to the extent of such payment, be a bar to recovery against the other.



(c) When any person, other than the immediate employer, shall have paid any compensation for which he would not have been liable independently of this section, he shall, unless he caused the injury, be entitled to recover the full amount so paid from the person primarily liable therefor, and jurisdiction to determine his claim shall be vested in the commission; *provided*, that such right of reimbursement against the person primarily liable for compensation shall not exist in favor of any insurance carrier insuring such other persons upon whom liability is imposed by this section, in any case where the immediate employer shall have joined with any of such other persons in taking out such policy of insurance or shall have contributed to the payment of the premium for such insurance, with the intent of securing joint protection thereby, anything in the policy to the contrary notwithstanding.

(d) The liability imposed by this section shall be subject to the following limitations:

(1) Such liability shall exist only in cases where the injury occurred on or in or about the premises on which the principal employer or contracting employer, whether general or intermediate, has undertaken to execute or to have executed any work, or when such premises or work are otherwise under his control or management.

(2) Such liability shall not exist in the event that the immediate employer, or other person primarily liable for the compensation shall, previous to the suffering of such injury, have taken out, and maintained in full force and effect, compensation insurance with any insurance carrier, covering his full liability for compensation.

(3) The commission may, in its discretion, order that execution against such principal employer or contracting employer be stayed until execution against the immediate employer shall be returned unsatisfied.

(k) *When Person Other Than Employer Liable for Damages.*—Sec. 26. When any injury for which compensation is payable under the provisions of this act shall

have been sustained under circumstances creating in some other person than the employer a legal liability to pay damages in respect thereto, the injured employee may claim compensation under the provisions of this act, but the payment or award of compensation shall not affect the claim or right of action of such injured employee against such other person, but such injured employee may proceed at law against such person to recover damages; and any employer having paid, or having become obligated to pay, compensation may bring an action against such other person to recover damages, and evidence of any amount he has paid or become obligated to pay, as compensation, shall not be admissible; *provided*, that if either such employee or such employer shall bring such action against such third person, he shall forthwith notify the other in writing, by personal presentation or by registered mail, of such fact and of the name of the court in which suit is brought, filing proof thereof in such action, and such other may join as a party plaintiff in such action within thirty days after such notification, or must consolidate his action, if brought independently, and if such other party fails to join or proceed as party plaintiff, his right of action against such third person shall be barred. In the event that such employer and employee shall join as parties plaintiff in such action and damages are recovered, such damages shall be so apportioned that the claim of the employer shall take precedence over that of the injured employee, and if the damages shall not be sufficient or shall be only sufficient to reimburse the employer for the compensation which he has paid, or has become obligated to pay, with a reasonable allowance for an attorney's fee, to be fixed by the court, and his costs, such damages shall be assessed in his favor; but if the damages shall be more than sufficient to reimburse him, the damages shall be assessed in his favor sufficient to so reimburse him, and the excess shall be assessed in favor of the injured employee. In case such employee

shall prosecute such suit to judgment without the union of the employer by joinder or consolidation, the employer shall have a first lien upon any damages secured by the employee by such proceeding for the compensation the employer has paid, or has become obligated to pay, and may, by motion in open court, secure the allowance of said lien at any time before satisfaction of the judgment; and if such suit shall be prosecuted to judgment by the employer alone, such employer shall hold the damages recovered by him, over and above the compensation which he has paid, or has become obligated to pay, with a reasonable allowance for an attorney's fee, to be fixed by the court, and his costs, for the benefit of the injured employee or other person entitled, and the injured employee shall, in addition to other remedies provided by law, be entitled, by motion in open court, to have such excess awarded to him in the judgment entered by the court, at any time prior to satisfaction thereof.

(1) *Contents of Release or Compromise Agreement.*—  
Sec. 27. Every release or compromise agreement shall be in writing, duly executed and attested by two disinterested witnesses, and shall specify the date of the accident, the average weekly wages of the employee, determined according to section twelve hereof, the nature of the disability, whether total or partial, permanent or temporary, the amount paid or due and unpaid to the employee up to the date of the release or agreement or death, as the case may be, and, if any, the amount of the payment or benefits then or thereafter to be made, and the length of time that such payment is to continue. In case of death there shall also be stated in such release or compromise agreement the date of death, the name of the widow, if any, the names and ages of all children, if any, and the names of all other dependents, if any, and whether such dependents be total or partial, and the amount paid or to be paid as a death benefit and to whom such payment is to be made.

(m) *Compensation Payable in Lump Sum.*—Sec. 28.

(a) At the time of making its award, or at any time thereafter, the commission on its own motion, either with or without notice, or upon application of either party with due notice to the other, may, in its discretion, commute the compensation payable under this act to a lump sum, if it appears that such commutation is necessary for the protection of the person entitled thereto, or for the best interest of either party, or that it will avoid undue expense or hardship to either party, or that the employer has sold or otherwise disposed of the greater part of his assets, or is about to do so, or that the employer is not a resident of this state, and the commission may order such compensation paid forthwith or at some future time.

(n) *Ways for Securing Payment of Compensation.*—

Sec. 29. (a) Every employer as defined in section seven hereof, except the state and all political subdivisions or institutions thereof, shall secure the payment of compensation in one or more of the following ways:

1. By insuring and keeping insured against liability to pay compensation in one or more insurance carriers duly authorized to write compensation insurance in this state.

2. By securing from the commission a certificate of consent to self-insure, which may be given upon his furnishing proof satisfactory to the commission of ability to carry his own insurance and pay any compensation that may become due to his employees. The commission may, in its discretion, require such employer to deposit with the state treasurer a bond or securities approved by the commission, in an amount to be determined by the commission. Such certificate may be revoked at any time for good cause shown.

(o) *Employer Relieved From Liability by Insurance Carrier.*—(1) If the employer shall be insured against liability for compensation with any insurance carrier, and if after the suffering of any injury such insurance car-



rier shall serve or cause to be served upon any person claiming compensation against such employer a notice that it has assumed and agreed to pay the compensation, if any, for which the employer is liable, and shall file a copy of such notice with the commission, such employer shall thereupon be relieved from liability for compensation to such claimant and the insurance carrier shall, without notice, be substituted in place of the employer in any proceeding theretofore or thereafter instituted by such person to recover such compensation, and the employer shall be dismissed therefrom. Such proceedings shall not abate on account of such substitution but shall be continued against such insurance carrier. If at the time of the suffering of an injury for which compensation is claimed, or may be claimed, the employer shall be insured against liability for the full amount of compensation payable, or that may become payable, the employer may serve or cause to be served upon any person claiming compensation on account of the suffering of such injury and upon the insurance carrier a notice that the insurance carrier has in its policy contract or otherwise, assumed and agreed to pay the compensation, if any, for which the employer is liable, and may file a copy of such notice with the commission. If it shall thereafter appear to the satisfaction of the commission that the insurance carrier has, through the issuance of its contract of insurance or otherwise, assumed such liability for compensation, such employer shall thereupon be relieved from liability for compensation to such claimant and the insurance carrier shall, after notice, be substituted in place of the employer in any proceeding theretofore or thereafter instituted by such person to recover such compensation, and the employer shall be dismissed therefrom. Such proceeding shall not abate on account of such substitution, but shall be continued against such insurance carrier.

(2) The commission may, with or without the filing of the notice required by the preceding paragraph, enter its order relieving the employer from liability where it appears from the pleadings, stipulations or proof that an insurance carrier joined as party to the proceeding is liable for the full compensation which the employer in such proceeding is liable to pay.

(p) *Jurisdiction of Commission Over Places of Employment.*—Sec. 38. The commission is vested with full power and jurisdiction over, and shall have such supervision of, every employment and place of employment in this state as may be necessary adequately to enforce and administer all laws and all lawful orders requiring such employment and place of employment to be safe, and requiring the protection of the life and safety of every employee in such employment or place of employment.

(q) *Obeying Order.*—Sec. 44. Every employer, employee and other person shall obey and comply with each and every requirement of every order, decision, direction, rule or regulation made or prescribed by the commission in connection with the matters herein specified, or in any way relating to or affecting safety of employments or places of employment, or to protect the life and safety of employees in such employments or places of employment, and shall do everything necessary or proper in order to secure compliance with and observance of every such order, decision, direction, rule or regulation.

(r) *Report of Injuries.*—Sec. 53. Every employer of labor, without any exceptions, and every insurance carrier, and every physician or surgeon who attends any injured employee, is hereby required to file with the commission, under such rules and regulations as the commission may from time to time make, a full and complete report of every injury to an employee arising out of or in the course of his employment and resulting in loss of life or injury to such person. Such reports shall be furnished to the commission in such form and such detail as

the commission shall from time to time prescribe, and shall make specific answers to all questions required by the commission under its rules and regulations.

Act of the Legislature, approved May 23, 1917;  
in effect January 1, 1918.

A. J. BLEDSOE, ATTORNEY-AT-LAW, Los Angeles, Cal.—  
General practice in all the courts; contracts by the year for legal services; office advice, written opinions, prosecuting and defending suits. See title page of this book for office address of A. J. Bledsoe.

## PART XVII.

### COMMON LAW COMPANIES.

Section 1357.—COMMON LAW AND STATUTE LAW.—In England, the common law, as distinguished from statute law, is that part of the law of the land which is founded upon long established customs of the people, customs running back, in many instances, to a time beyond the memory of man. The constitution of England is made up of established and recognized customs—the common law—which are seldom departed from or overturned by legislative enactments. In California, we have a written constitution, which is the highest law of the commonwealth. But the principles of the common law (whenever not prohibited or contravened by our constitution or statutes) are recognized here, as elsewhere; and the matter of trusts and trustees, as recognized in the common law, is an established fact in our own affairs.

Section 1358.—A COMMON LAW COMPANY.—A corporation, or a partnership, organized under the statutes of California, carries with it the burden of individual liability for debts. It is generally conceded now, anywhere in the United States, that there can be an organization under the *common law*, with no privilege or franchise from legislative authority, that can do the same acts as an individual, with no further restrictions than are placed upon individuals. Such an organization is put into effect by a Declaration of Trust. The Declaration of Trust is filed for record in the office of the County Recorder. The property and the business is in the hands of one or more



trustees, to conduct the business for the benefit of the shareholders.

Section 1359.—**TERM OF EXISTENCE OF THE COMPANY.**—The trust may continue for any term which does not violate the law against perpetuities. A common law company cannot be organized to hold property in trust forever. A corporation organized under the statute law may fix its own term of existence at fifty years or less. In the states where common law companies are generally found, the trust is made to extend for a term of twenty years after the death of the last surviving original subscriber. It is claimed that this prevents violation of the rule against perpetuities.

Section 1360.—**SHAREHOLDERS.**—The trustees hold the legal title to all the property of the company, and they issue certificates, similar to shares of stock, to the beneficiaries of the trust, showing the interest owned by each. The trust agreement provides that the death of a shareholder merely entitles his legal representatives (the executor or administrator of the estate) to a new certificate. The shareholders have no right to call for partition or division of the property. Shares may be preferred or common.

Section 1361.—**LIMITED INDIVIDUAL LIABILITIES.**—The trust agreement may provide for payment to the trustees by the shareholders, and for assessments and collections. The liability of the shareholders to the organization for assessments is limited by the terms of the trust agreement. As to third parties, the trustees are required to provide, in the contracts they make, that only property in their hands as trustees shall be answerable. Parties making contracts of any kind with the trustees, or buying from or selling to the trustees, are thus notified in advance that creditors must look only to the property in the hands of the trustees, for the satisfaction of all claims.

Section 1362.—CERTIFICATES.—The trustees issue certificates for the number of shares to which each is entitled and has subscribed for. These certificates have a par value, entitle the holder to one vote for each share, and are transferable on the books of the trustees.

Section 1363.—MEETINGS OF THE SHAREHOLDERS.—The shareholders meet annually, and they have such special meetings as may be necessary. The agreement organizing the company provides for the mode of calling meetings of the shareholders. The shareholders, at such meetings, fill vacancies in the number of trustees, and may depose any or all of the trustees and elect others.

Section 1364.—POWER OF THE TRUSTEES.—The trustees have the exclusive management of the business. Under terms of the trust, they may buy and sell, borrow money and mortgage assets, and perform other acts, practically the same as directors of corporations. The powers of such an organization may be broader than most corporations, as it may provide for whatever any individual may do. Ownership of stocks in incorporated companies may be provided for.

Declarations of Trust as Effective Substitutes  
for Incorporation, by John H. Sears, page 5.

Section 1365.—ADVANTAGES OF TRUST METHOD.—The advantages of the trust method over incorporations have been summarized as follows:

1. Taxation peculiar to corporations, as, for example, the Federal excise tax, and state organization and franchise taxes, are avoided. The Supreme Court of the United States decided that a trust is not liable for the tax on corporations.

Eliot vs. Freeman, in 31 Supreme Court Reporter, page 360.

2. Reports required of corporations need not be filed.
3. The trustees do not have to comply with the foreign corporation laws of various states.
4. There is no legal obligation to maintain the capital and refrain from paying dividends out of capital.
5. Dissolution may be effected without the formalities required of corporations.

A. J. BLEDSOE, ATTORNEY-AT-LAW, Los Angeles, Cal.—Special attention to organization of common law companies in California. All inquiries by mail promptly answered. See title page of this book for office address of A. J. Bledsoe.

## PART XVIII.

### TAXES AND TAX TITLES.

Section 1366.—TAX LAWS STRICTLY CONSTRUED.—The imposition of a tax on property by the governing power is a thing which is purely statutory. The tax and the manner of imposing it, and the method of collecting it, are created and regulated solely by the Legislature. Therefore, it is said that tax laws are to be strictly construed. In other words, in order for a tax or tax title to be valid, every step specified by the statute to be taken must have been taken by the proper authorities. If anything is lacking, if any required act has been omitted, a tax title under the law of California will not be good. In succeeding Sections will be found the law of California on the subject of taxes and tax titles.

Section 1367.—PROPERTY SUBJECT TO TAXATION.—The Constitution of California, Article XIII, provides as follows:

Sec. 1.—All property in the state except as otherwise in this Constitution provided, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law, or as hereinafter provided. The word “property,” as used in this article and section, is hereby declared to include moneys, credits, bonds, stocks, dues, franchises, and all other matters and things, real, personal and mixed, capable of private ownership; *provided*, that a mortgage, deed of trust, contract, or other obligation by which a debt is secured when land is pledged as security for the payment thereof, together with the money represented by such



## TAXES AND TAX TITLES

Section 1367, page 1070, "Business Law for Business Men"—PROPERTY SUBJECT TO TAXATION—Section 3607 of the Political Code is amended to read as follows: "All property in this state, not exempt under the laws of the United States, excepting date palms under the age of eight years old from the time of planting in orchard form and fruit and nut-bearing trees under the age of four years from the time of planting in orchard form, and grapevines under the age of three years from the time of planting in vineyard form, growing crops, property used exclusively for public schools, free public libraries, and free museums, and such as may belong to the United States, this state, or to any county or municipal corporation within this state, is subject to taxation, as in this code provided; but nothing in this code shall be construed to require or permit double taxation."

Act of the Legislature of California, approved May 19, 1921; in effect July 19, 1921.

(a) PERSONAL PROPERTY IN TRANSIT—All personal property in the possession or under the control and management of any person, corporation or company engaged in the intrastate transportation by water of goods or commodities of any sort or description shall in the event that said personal property is in transit have as its situs for purposes of taxation the residence of the owner thereof, and it is hereby made the duty of every such individual, company or corporation to file with the forwarding agent or warehouse proprietor for delivery to the assessor of his county, a copy of the bill of lading or manifest for all goods in transit or on board on the first Monday of March, showing description and value of such personal property together with name of consignor and consignee thereof, or if such personal property be delivered for transportation by other persons it shall then be the duty of said person, company or corporation to report same to the county assessor of the county from which such property was received.

Act of the Legislature of California, approved May 23, 1921; in effect July 23, 1921.

ALIEN POLL TAX—Every alien male inhabitant of this state over twenty- one years of age and under sixty years of age, except paupers, idiots and insane persons, must annually pay a poll tax of ten dollars. In the year one thousand nine hundred twenty-one A. D. such poll tax shall become due and payable on the first day of August, and shall become delinquent if not paid on or prior to the thirty-first day of December of said year, whereupon there shall be added thereto a penalty of fifty per cent for such delinquency. In all succeeding years such poll tax shall become due and payable on the first Monday in March and shall become delinquent if not paid on or prior to the thirty-first day of July next ensuing, whereupon there shall be added thereto a penalty of fifty per cent for such delinquency. In the event such poll tax and penalty be not paid on or prior to the thirty-first day of December of the year in which levied, the whole amount thereof, tax and penalty, shall thereafter bear interest at the rate of seven per cent per annum, payable annually in advance on the first day of January for the ensuing year and no remission thereof shall be made for any part of the year during which such delinquent tax, penalty and accrued interest may be collected.

It shall be the duty of every person liable to pay such poll tax to register, annually, in the county, or city and county, wherein he may reside; **provided**, that if he be employed and temporarily domiciled in a different county during the time prescribed for registration he may register in the county of his employment.

Act of the Legislature of California, approved May 25, 1921; in effect May 25, 1921.



debt, shall not be considered property subject to taxation; *and further provided*, that property used for free public libraries, and free museums, growing crops, property used exclusively for public schools, and such as may belong to the United States, this state, or to any county, city and county, or municipal corporation within the state shall be exempt from taxation, except such lands and the improvements thereon located outside of the county, city and county, or municipal corporation owning the same as were subject to taxation at the time of the acquisition of the same by said county, city and county, or municipal corporation; *provided*, that no improvements of any character whatever constructed by any county, city and county, or municipal corporation shall be subject to taxation. All lands or improvements thereon, belonging to any county, city and county, or municipal corporation not exempt from taxation, shall be assessed by the assessor of the county, city and county, or municipal corporation in which said lands or improvements are located, and said assessment shall be subject to review, equalization and adjustment by the State Board of Equalization. The legislature may provide, except in the case of credits secured by mortgage or trust deed, for a deduction from credits of debts due to bona fide residents of this state. (Amendment adopted November 3, 1914.)

Sec. 11¼.—The property to the amount of one thousand dollars of every resident in this state who has served in the army, navy, marine corps, or revenue marine service of the United States in time of war, and received an honorable discharge therefrom; or lacking such amount of property in his own name, so much of the property of the wife of any such person as shall be necessary to equal said amount; and property to the amount of one thousand dollars of the widow resident in this state, or if there be no such widow, of the widowed mother resident in this state, of every person who has so served and has died either during his term of service or after receiving honorable discharge from said service; and the property to

the amount of one thousand dollars of pensioned widows, fathers, and mothers, resident in this state, of soldiers, sailors, and marines who served in the army, navy or marine corps, or revenue marine service of the United States, shall be exempt from taxation; *provided*, that this exemption shall not apply to any person named herein owning property of the value of five thousand dollars or more, or where the wife of such soldier or sailor owns property of the value of five thousand dollars or more. No exemption shall be made under the provisions of this act of the property of a person who is not a legal resident of this state. [New section adopted October 10, 1911.]

Sec. 11½.—All buildings, and so much of the real property on which they are situated as may be required for the convenient use and occupation of said buildings, when the same are used solely and exclusively for religious worship shall be free from taxation; *provided*, that no building so used which may be rented for religious purposes and rent received by the owner therefor, shall be exempt from taxation. [New section adopted November 6, 1900.]

Sec. 1¾.—All bonds hereafter issued by the State of California, or by any county, city and county, municipal corporation, or district (including school, reclamation, and irrigation districts) within said state, shall be free and exempt from taxation. [New section adopted November 4, 1902.]

Sec. 1a.—Any educational institution of collegiate grade, within the State of California, not conducted for profit, shall hold exempt from taxation its buildings and equipment, its grounds within which its buildings are located, not exceeding one hundred acres in area, its securities and income used exclusively for the purpose of education. [New section adopted November 3, 1914.]

Sec. 4.—All vessels of more than fifty tons burden registered at any port in this state and engaged in the transportation of freight or passengers shall be exempt from taxation except for state purposes, until and including



the first day of January, nineteen hundred thirty-five. [New section adopted November 3, 1914.]

Sec. 101½.—The personal property of every householder to the amount of one hundred dollars, the articles to be selected by each householder, shall be exempt from taxation. [New section adopted November 8, 1904.]

Sec. 11.—Income taxes may be assessed to and collected from persons, corporations, joint-stock associations, or companies resident or doing business in this state, or any one or more of them, in such cases and amounts, and in such manner, as shall be prescribed by law.

Sec. 12.—No poll tax or head tax for any purpose whatsoever shall be levied or collected in the State of California. [New section adopted November 3, 1914.]

Sec. 12¾.—Fruit and nut bearing trees under the age of four years from the time of planting in orchard form, and grapevines under the age of three years from the time of planting in vineyard form, shall be exempt from taxation, and nothing in this article shall be construed as subjecting such trees and grapevines to taxation. [New section adopted November 6, 1894.]

Section 1368.—SHARES OF STOCK IN CORPORATIONS.—Shares of stock in corporations possess no intrinsic value over and above the actual value of the property of the corporation which they stand for and represent. The assessment and taxation of such shares, and also of all corporate property would be double taxation. All property belonging to corporations shall be assessed and taxed, in the manner provided by law; but no assessment shall be made of shares of stock in any corporation except as prescribed in the constitution of this state and the laws enacted pursuant to such provisions of the constitution.

Act of the Legislature, approved May 11, 1917;  
in effect July 27, 1917.

Section 1369.—ASSESSMENT AT FULL CASH VALUE.—All taxable property must be assessed at its full cash value. Land and improvements thereon shall be separately assessed. Cultivated and uncultivated land, of the same quality, and similarly situated, shall be assessed at the same value.

Act of the Legislature, approved May 11, 1917;  
in effect July 27, 1917.

Section 1370.—ASSESSMENT OF TAXABLE PROPERTY.—Except as otherwise provided in the constitution of this state, all taxable property shall be assessed in the county, city, city and county, town, township, or district in which it is situated. Land shall be assessed in parcels, or subdivisions, not exceeding six hundred forty acres each; and tracts of land containing more than six hundred forty acres, which have been sectionized by the United States government, shall be assessed by sections or fractions of sections. Land sold by the state for which no patent has been issued, shall be assessed the same as other land, but the owner shall be entitled to a deduction from such assessed valuation in the amount due the state as principal upon the purchase price. The assessor must, between the first Mondays in March and July of each year, ascertain the names of all taxable inhabitants, and all the property in his county subject to taxation, except such as is required to be assessed by the state board of equalization, and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was, at twelve o'clock meridian of the first Monday in March next preceding; but no mistake in the name of the owner or supposed owner of real property shall render the assessment thereof invalid. In assessing solvent credits, not secured by mortgage or trust deed on real estate, a deduction therefrom shall be made of debts due to bona fide residents of this state.

Act of the Legislature, approved May 11, 1917;  
in effect July 27, 1917.

**Section 1371.—STATEMENT OF PROPERTY OWNED.**—The assessor must exact from each person a statement, under oath, setting forth specifically all the real and personal property owned by such person, or in his possession, or under his control, at twelve o'clock m. on the first Monday in March. Such statement shall be in writing, showing separately :

1. All property belonging to, claimed by, or in the possession or under the control or management of such person.

2. All property belonging to, claimed by, or in the possession or under the control or management of any firm of which such person is a member.

3. All property belonging to, claimed by, or in the possession or under the control or management of any corporation of which such person is president, secretary, cashier, or managing agent.

4. The county in which such property is situated, or in which it is liable to taxation, and, if liable, to taxation in the county in which the statement is made, also the city, town, township, school district, road district, or other revenue districts in which it is situated.

5. An exact description of all lands, in parcels or subdivisions, not exceeding six hundred forty acres each, and the sections and fractional sections of all tracts of land containing more than six hundred forty acres, which have been sectionized by the United States government, improvements and personal property, including all vessels, steamers, and other watercraft; and all taxable state, county, city, or other municipal or public bonds, and the taxable bonds of any person, firm, or corporation, and deposits of money, gold dust, or other valuables, and the names of the persons with whom such deposits are made, and the places in which they may be found.

6. All solvent credits, unsecured by deed of trust, mortgage, or other lien on real or personal property, due or owing to such person, or any firm of which he is a member, or due or owing to any corporation of which he

is president, secretary, cashier, or managing agent, deducting from the sum total of such credits such debts only, unsecured by trust deed, mortgage, or other lien on real or personal property, as may be owing by such person, firm, or corporation to bona fide residents of this state. No debts shall be so deducted unless the statement shows the amount of such debt as stated under oath in aggregate. Whenever one member of a firm, or one of the proper officers of a corporation, has made a statement showing the property of the firm or corporation, another member of the firm, or another officer, need not include such property in the statement made by him; but his statement must show the name of the person or officer who made the statement in which such property is included.

Act of the Legislature, approved May 11, 1917;  
in effect July 27, 1917.

Section 1372.—FERRIES.—A ferry boat is a vessel traversing across any of the waters of the state, between two constant points, regularly employed for the transfer of passengers and freight, authorized by law so to do. Where ferries connect more than one county, the wharves, storehouses, and all stationary property belonging to or connected with such ferries, must be assessed, and the taxes paid, in the county where located. The value of all watercraft, and of all toll bridges connecting more than one county, must be assessed in equal proportions in the counties connected by such ferries or toll bridges.

Act of the Legislature, approved May 11, 1917;  
in effect July 27, 1917.

Section 1373.—WATER DITCHES.—Water ditches constructed for mining, manufacturing, or irrigation purposes, and wagon and turnpike toll roads, must be assessed the same as real estate by the assessor of the county, at a rate per mile for that portion of such prop-



erty as lies within his county.

Act of the Legislature, approved May 11, 1917;  
in effect July 27, 1917.

Section 1374.—STATEMENT OF TAX RATE SENT TO CONTROLLER.—When the board of supervisors of each county, and city and county shall have fixed the rate of county, or city and county taxation, the clerk of the board of supervisors must, within three days after such rate has been fixed, transmit by mail, postage paid, to the controller, in such form as the controller shall direct, a statement of the rate of taxation levied by the board of supervisors for county, or city and county taxation. If the clerk fails to transmit such statement in the time herein provided for, he shall forfeit to the state one thousand dollars, to be recovered in an action brought by the attorney general, in the name of the controller.

Act of the Legislature, approved May 11, 1917;  
in effect July 27, 1917.

Section 1375. — STATEMENTS FROM “ASSESSMENT BOOK.”—The auditor must, on or before the second Monday in August in each year, prepare from the “assessment book” of such year, as corrected by the board of supervisors, duplicate statements, showing in separate columns—

1. The number of acres of land.
2. The total value of all property.
3. The value of real estate.
4. The value of improvements thereon.
5. The value of personal property, exclusive of money.
6. The amount of money.
7. Such other information as the state board of equalization may require.

Act of the Legislature, approved May 11, 1917;  
in effect July 27, 1917.

Section 1376.—STATEMENT OF AMOUNT CHARGED SENT TO CONTROLLER.—On delivering the assessment-book to

the tax collector, the auditor must charge the tax collector with the full amount of the taxes levied, and forthwith transmit by mail to the controller of state, in such form as the controller may prescribe, a statement of the amount so charged. Any auditor failing to forward such statement to the controller within ten days after the roll has been delivered to the tax collector, forfeits to the state one thousand dollars, to be recovered in an action brought by the attorney general, in the name of the controller.

Section 1377.—STATEMENT BY TAX COLLECTOR.—On the first Monday in each month the tax collector must settle with the auditor for all moneys collected for the state or county, and pay the same to the county treasurer, and on the same day must deliver to and file in the office of the auditor a statement under oath, showing:

1. An itemized account of all of his transactions and receipts since his last settlement, which account must show the amount collected for each fund or district extended on the assessment book.

2. That all money collected by him as tax collector has been so paid to the county treasurer.

Act of the Legislature, approved May 11, 1917;  
in effect July 27, 1917.

Section 1378.—EXEMPTION OF CHURCH PROPERTY.—All buildings, and so much of the real property on which they are situated as may be required for the convenient use and occupation of said buildings, when the same are used solely and exclusively for religious worship, shall be free from taxation; provided, that no building so used which may be rented for religious purposes and rent received by the owner therefor shall be exempt from taxation. That any person claiming property to be exempt from taxation under this section shall make a return thereof to the assessor annually, the same as property listed for taxation, and shall accompany the same by an

affidavit showing that the building is used solely and exclusively for religious worship, and that the described portion of the real property claimed as exempt is required for the convenient use and occupation of such building, and that the same is not rented for religious purposes and rent received by the owner therefor.

Political Code, Section 3611.

Section 1379.—CEMETERY LANDS EXEMPT FROM TAXATION.—The cemetery lands and property of any association, formed pursuant to law, are exempt from all public taxes, rates, and assessments, and are not liable to be sold on execution, or be applied in payment of debts due from any individual proprietors. But the proprietors of lots, or plots, in such cemeteries, their heirs, or devisees, may hold the same exempt therefrom, so long as the same shall remain dedicated to the purposes of a cemetery.

Act of the Legislature, approved April 24, 1911.

Section 1380.—FUNDS OF FRATERNAL BENEFIT SOCIETY EXEMPT.—All the funds of a fraternal benefit society, organized and licensed under the law of this state as a charitable and benevolent institution, are exempt from all state, county, district, municipal and school taxes. But the real estate and office equipment of such societies may be taxed.

Act of the Legislature, approved May 1, 1911.

Section 1381.—FEDERAL SECURITIES NOT TAXABLE BY THE STATE.—Bonds or other obligations of the United States, issued under its constitutional power to borrow money for its own purposes, are not subject to taxation by the state or municipal governments.

Section 1382.—PUBLIC PROPERTY NOT SUBJECT TO TAXATION.—Public property is not subject to taxation. If it is the property of the state, it is not taxed by the state

itself, because it would be unreasonable to impose a tax, the payment of which would have to be met by the levy of another tax. For a similar reason, the property of a city, town or county, belonging to a municipal corporation, when used for public purposes, is not a proper subject of taxation. Considerations of public policy are deemed sufficient to exempt all such property from taxation.

Section 1383.—CONDITIONS OF ASSESSMENT OF PROPERTY.—All taxable property must be assessed at its full cash value. Land and improvements thereon shall be separately assessed. Cultivated and uncultivated land, of the same quality, and similarly situated, shall be assessed at the same value. A mortgage, deed of trust, contract, or other obligation by which a debt is secured, shall for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby, except as to railroad and other quasi-public corporations. In case of debt so secured, the value of the property affected by such mortgage, deed of trust, contract, or obligation, less the value of such security, shall be assessed and taxed to the owner of the property, and the value of such security shall be assessed and taxed to the owner thereof, in the county, city, or district in which the property affected thereby is situated. The taxes so levied shall be a lien upon the property and security, and may be paid by either party to such security; if paid by the owner of the security, the tax so levied upon the property affected thereby shall become a part of the debt so secured. If the owner of the property shall pay the tax so levied on such security, it shall constitute a payment thereon, and, to the extent of such payment, a full discharge thereof. If any such security or indebtedness shall be paid by any such debtor or debtors after assessment, and before the tax levy, the amount of such levy may likewise be retained by such debtor or debtors, and shall be computed according to the tax levy for the pre-



ceding year. The parties to any contract of loan or to any mortgage, deed of trust or other lien securing any obligation, shall nevertheless have the right to provide by contract that the debtor shall pay all or any taxes or assessments on the money loaned or on the mortgage, deed of trust, or other lien, or on the property thereby covered or the obligation thereby secured, and such contract shall be valid and constitute a waiver by the debtor of all right to treat the payment of such tax or assessment as a payment on the amount loaned or secured or as being to any extent a discharge thereof.

Political Code, Section 3627.

Section 1384.—RAILROADS AND FRANCHISES.—Railroads operated in more than one county in this state shall be assessed by the state board of equalization. Other franchises, if granted by the authorities of a county, city, or city and county, must be assessed in the county, city, or city and county within which they were granted; if granted by any other authority, they must be assessed in the county in which the corporations, firms, or persons owning or holding them have their principal place of business. All other taxable property shall be assessed in the county, city, or city and county, town, township, or district in which it is situated.

Political Code, Section 3638.

Section 1385.—ARBITRARY ASSESSMENTS.—If any person, after demand made by the assessor, neglects or refuses to give, under oath, the statement herein provided for, or to comply with the other requirements of this title, the assessor must note the refusal on the assessment book, opposite the name of such person, and must make an estimate of the value of such property of such person, and the assessor must transmit on or before the first day of July of each year to the board of supervisors a verified report in writing, separate from the assessment roll, containing a complete list of all persons who

refuse or neglect to furnish a statement of their property as herein provided for, or to comply with the requirements of this title, the amount of the assessment upon the property of such persons, with a statement of the particular facts, if any, upon which the assessment has been made, and the valuation of the property so assessed ascertained. The board of supervisors must investigate and inquire into all assessments and values so fixed by the assessor, as prescribed by this section, and for that purpose must require each taxpayer affected by such assessment and valuation to make a statement under oath, within ten days from making an order requiring such statement, setting forth specifically, all the property owned or controlled, or in the possession of such taxpayer on the first Monday of March. If any taxpayer, after demand made by the board of supervisors, shall neglect or refuse to make and deliver to the said board of supervisors the statement, duly verified, herein provided for, or to comply with the other requirements of this title, the said board of supervisors, sitting as a county board of equalization, must increase such assessment and valuation to such an amount as the said board shall deem just; but the value fixed by the assessor must not, in any case, be reduced by the board of supervisors.

Political Code, Section 3633.

Section 1386.—ASSESSMENT OF UNKNOWN OR ABSENT OWNERS.—If the owner or claimant of any property, not listed by another person, is absent or unknown, the assessor must make an estimate of the value of such property. If the name of the absent owner is known to the assessor, or if it appears of record in the office of the county recorder where the property is situated, the property must be assessed to such name; if unknown to the assessor, and if it does not so appear of record, the property must be assessed to unknown owners.

Political Code, Sections 3635, 3636.

**Section 1387. — CONSIGNED PROPERTY.**—All personal property consigned for sale to any person within this state, from any place out of this state, or from other county or counties in this state, must be assessed in the county where the property is situated.

Political Code, Section 3638.

**Section 1388. — UNDISTRIBUTED PROPERTY OF DECEASED PERSON.**—The undistributed or unpartitioned property of deceased persons may be assessed to the heirs, guardians, executors, or administrators; and a payment of taxes made by either binds all the parties in interest for their equal proportions.

Political Code, Section 3642.

**Section 1389. — VESSELS AND BOATS.**—Vessels registered, licensed, or enrolled out of and plying in whole or in part in the waters of this state, the owners of which reside in this state, must be assessed in this state.

All vessels, except ferry-boats, which may be registered, of every class which are by law required to be registered, must be assessed and the taxes thereon paid, only in the county, or city and county, where the same are registered, enrolled, or licensed.

All boats and small craft not required to be registered, must be assessed in the county where their owner resides.

Political Code, Sections 3644, 3645, 3646.

**Section 1390. — PROPERTY AND MONEY IN LITIGATION.**—Money and property in litigation in possession of a county treasurer, of a court, county clerk, or receiver, must be assessed to such treasurer, clerk, or receiver, and the taxes be paid thereon under the direction of the court.

Political Code, Section 3647.

**Section 1391. — PROPERTY CONCEALED, MISREPRESENTED, ETC.**—Any property wilfully concealed, removed, transferred, or misrepresented by the owner or agent thereof, to evade taxation, upon discovery must be assessed at not

exceeding ten times its value, and the assessment so made must not be reduced by the board of supervisors.

Political Code, Section 3648.

Section 1392.—PROPERTY NOT TAXED IN PREVIOUS YEAR. Any property discovered by the assessor to have escaped assessment for the last preceding year, if such property is in the ownership or under the control of the same person who owned or controlled it for such preceding year, may be assessed at double its value.

Political Code, Section 3649.

Section 1393.—NOTICE OF MEETING TO EQUALIZE ASSESSMENTS.—As soon as completed, the assessment book, together with the map books, statements, and military roll, must be delivered to the clerk of the board of supervisors, who must immediately give notice thereof, and of the time the board will meet to equalize assessments, by publication in a newspaper, if any is printed in the county; if none, then in such manner as the board may direct. In the meantime, the assessment-book, map-books, and statements must remain in his office for the inspection of all persons interested. After the board of equalization has completed its labors, the map-books and statements shall be returned to the county assessor's office, and shall be kept in said office for future reference.

Political Code, Section 3651.

Section 1394.—PERSONS CLAIMING OWNERSHIP.—Lands once described on the assessment-book need not be described a second time, but any person claiming the same, and desiring to be assessed therefor, may have his name inserted with that of the person to whom such land has been assessed.

Political Code, Section 3657.

Section 1395.—OFFICIAL MAPS OF CITY LOTS OR BLOCKS.—Whenever any city, town, or subdivision of land is platted or divided into lots or blocks, and whenever any addition to any city, town, or such subdivision shall be or has



been laid out into lots or blocks for the purpose of sale or transfer, it shall be lawful for the city engineer, or the county or city and county surveyor, under the direction and with the approval of the city council or board of supervisors of said city, county, or city and county, to make an official map of such city, town, or subdivision, giving to each block on such map a number, and to each lot or subdivision in such block a separate number or letter, and giving names to such streets, avenues, lanes, courts, commons, or parks, as may be delineated on such official map.

Whenever the city council or board of supervisors of such city, county, or city and county, shall adopt such map as the official map of the subdivision, town, city, county, or city and county, it shall be lawful to, and the assessor shall, describe such lots, blocks, or parcels of land by numbers or letters as delineated on such map in assessing such property, and it shall be lawful and sufficient to describe such lots or blocks in any deeds, conveyances, contracts, or obligations affecting any such lots or blocks as designated on such official map, a reference to such map sufficient for the identification thereof being coupled with such description.

Such engineer or surveyor, under the direction and with the approval of the city council or board of supervisors of such city, county, or city and county, may compile such map from maps on file, or may resurvey or renumber the blocks, or renumber or reletter the lots in such blocks, or change the names of streets. All surveys and the field-notes thereof made by any such engineer or surveyor, under the provisions of this section, or in surveying officially any lots or parcels of land in any city, town, county, or city and county, for the purposes of any such map, shall be filed in the office of the surveyor or engineer, as the case may be, and shall become a part of the public records of such city, town, county, or city and county.

Each and every map, made and adopted as hereinabove provided, shall be certified under the hands of a

majority of the members and the presiding officer and secretary and official seal, if any, of the authority adopting the same. Such certificate shall set forth in full the resolution adopting such map, with the date of adoption; and such map, so certified, shall be forthwith filed in the office of the county recorder of the county, or city and county, wherein the platted lands are situate, and the said recorder shall immediately securely fasten and bind, in one of a series of firmly bound books to be provided, together with the proper indexes thereof and appropriately marked for the reception of the maps herein provided for, each such map so filed with him; and the same shall become an official map for all the purposes of this section when so certified, filed and bound, but not before. This section is hereby made applicable to all cities, towns, and villages in this state, as well as to the counties, and cities and counties thereof, whether the same be incorporated or not; and the words "city council or board of supervisors" wherever used herein shall be deemed to include the proper corresponding governing board and authority in each such place; and the words "city engineer" and "county or city and county surveyor" shall be deemed to include the like or corresponding officer, subject to the direction of such "corresponding governing board and authority" in each such place; or, if there be no such officer subject to such direction, such "corresponding board and authority" may employ competent engineers and surveyors to the extent necessary for the carrying out of the purposes of this act in the places subject to its jurisdiction, and the persons so appointed shall have the same authority and shall perform the same duties as are given to and enjoined upon "city engineers" and "county or city and county surveyors," respectively, in like cases. The services of such engineers and surveyors so employed shall be contracted for, examined, passed upon, audited, and paid as are other debts contracted by such governing boards and authorities.

Political Code, Section 3658-A.

**Section 1396.—COUNTY BOARD OF EQUALIZATION.**—The board of supervisors of each county must meet on the first Monday of July in each year, to examine the assessment-book and equalize the assessment of property in the county. It must continue in session for that purpose, from time to time, until the business of equalization is disposed of, but not later than the third Monday in July.

The board has power, after giving notice in such manner as it may, by rule, prescribe, to increase or lower the entire assessment-roll, or any assessment contained therein, so as to equalize the assessment of the property contained in said roll, and make the assessment conform to the true value of such property in money.

No reduction must be made in the valuation of property, unless the party affected thereby or his agent makes and files with the board a written application therefor, verified by his oath showing the facts upon which it is claimed such reduction should be made.

Before the board grants the application or makes any reduction applied for, it must first examine, on oath, the person or the agent making the application touching the value of the property of such person. No reduction must be made unless such person or the agent making the application attends and answers all questions pertinent to the inquiry.

Upon the hearing of the application the board may subpoena such witnesses, hear and take such evidence in relation to the subject pending, as in its discretion it may deem proper.

During the session of the board the assessor and any deputy whose testimony is needed must be present, and may make any statement, or introduce and examine witnesses on questions before the board.

Any assessment on a mortgage, or deed of trust, which has been erroneously taxed to the mortgagee, or party loaning the money, when the same has been paid or satisfied prior to the first Monday in March, shall be valid

only as against the real estate from the assessment on which a reduction has been previously made. When partial payments have been made on a debt secured by mortgage, or deed of trust, the owner is authorized to make the proper deduction, listing only the balance due on the first Monday in March.

Political Code, Sections 3674, 3675, 3676, 3677, 3678.

Section 1397.—**TAX LEVY.**—The board of supervisors of each county must on the first Tuesday after the first Monday of September of each year, fix the rate of county taxes, designating the number of cents levied for each fund on each one hundred dollars of property, and must levy the state and county taxes upon the taxable property in the county; *provided*, that it shall not be lawful for any board of supervisors of any county in the state to levy, nor shall any tax greater than fifty cents on each one hundred dollars of property be levied and collected in any one year, to pay the bonded indebtedness, or judgment arising therefrom, of this state, or of any county or municipality in this state.

Act of the Legislature, in effect July 27, 1917.

Section 1398.—**LIEN OF TAXES.**—Every tax has the effect of a judgment against the person, and every such lien has the force and effect of an execution duly levied against all property of the delinquent. The judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof.

Every tax due upon personal property is a lien upon the real property of the owner thereof, from and after twelve o'clock m. of the first Monday in March in each year.

Every tax due upon real property is a lien against the property assessed; and every tax due upon improvements upon real estate assessed to others than the owner of the real estate, is a lien upon the land and improvements;



which several liens attach as of the first Monday of March in each year.

Political Code, Sections 3716, 3717, 3718.

Section 1399.—COLLECTOR'S NOTICE THAT TAXES ARE DUE.—On or before the third Monday in October, the tax collector must publish a notice specifying:

1. That the taxes on all personal property secured by real property, and one-half of the taxes on all real property, will be due and payable on the third Monday in October, and will be delinquent on the first Monday in December next thereafter, at five o'clock p. m., and that unless paid prior thereto fifteen per cent will be added to the amount thereof, and that if said one-half be not paid before the last Monday in April next, at five o'clock p. m., an additional five per cent will be added thereto. That the remaining one-half of the taxes on all real property will be payable on and after the second Monday in January next, and will be delinquent on the last Monday in April, next thereafter, at five o'clock p. m., and that unless paid prior thereto, five per cent will be added to the amount thereof.

2. That all taxes may be paid at the time the first installment, as herein provided, is due and payable.

3. The times and places at which payment of taxes may be made.

Act of the Legislature, approved April 4, 1919;  
in effect July 22, 1919.

Section 1400.—TAXES ON ANY PARTICULAR PARCEL OF LAND MAY BE PAID SEPARATELY.—The taxes on any particular lot, piece, or parcel of land contained in any assessment may be paid separately from the whole assessment, if such lot, piece, or parcel has a separate valuation on the assessment-roll, by paying the amount of state and county taxes due on such lot, piece, or parcel of land, with a proper proportion of the amounts due as tax on personal property, penalties, if any, and a proper propor-

tion of the tax due to any school, road, or other lesser taxation district. The tax collector shall make an entry on the margin of the assessment-book, showing what property has been released by the payment of the taxes, together with the amounts of such taxes separately and specifically set forth.

Political Code, Section 3747.

Section 1401.—PLACE OF PAYMENT.—All taxes must be paid at the office of the tax-collector, unless the board of supervisors by order, made on or before the first Monday in October, direct that the taxes must be collected in the several townships of the county, or in either thereof, or in any municipal corporation in said county; in which case, the notice by the tax-collector must specify a time and place within any township or municipal corporation named in such order, when and where the tax-collector will attend to receive the payment of taxes.

The notice in every case must be published for two weeks in some weekly or daily newspaper published in the county, if there is one; or if there is not, then by posting it in three public places in each township.

Political Code, Sections 3748, 3749.

Section 1402.—PAYMENT OF TAXES OF DECEDENTS AND INSOLVENTS.—The superior court must require every administrator or executor to pay out of the funds of the estate all taxes due from such estate; and no order or decree for the distribution of any property of any decedent among the heirs or devisees, must be made until all taxes against the estate are paid. In the same manner, the court must require the assignee to pay out of the funds of an insolvent's estate all taxes due from such estate; and no final discharge to such assignee shall be granted until all taxes against the insolvent's estate are paid.

Political Code, Section 3752.

Section 1403.—WHEN TAXES ARE DELINQUENT.—On the first Monday of December of each year, at six o'clock P. M., all taxes then unpaid, except the last installment of the real property taxes, are delinquent, and thereafter the tax collector must collect, for the use of the county, or city and county, an additional fifteen per cent thereon; *provided*, that if they be not paid before the last Monday in April next succeeding, at six o'clock P. M., he shall collect an additional five per cent thereon. On the last Monday in April of each year, at six o'clock P. M., all the unpaid portion of the remaining one-half of the taxes on all real property is delinquent, and thereafter the tax collector must collect, for the use of the county, or city and county, an additional five per cent thereon; *provided*, that the entire tax on any real property may be paid at the time the first installment, as above provided, is due and payable; *and provided, further*, that the taxes on all personal property unsecured by real property shall be due and payable immediately after the assessment of said personal property is made.

Act of the Legislature, approved June 4, 1915,  
in effect August 8, 1915.

Section 1404.—ANNUAL PUBLICATION OF DELINQUENT TAX LISTS.—On or before the eighth day of June of each year, the tax collector must publish the delinquent list, which must contain the names of the persons and a description of the property delinquent, and the amount of taxes, penalties, and costs due, opposite each name and description, with the taxes due on personal property, the delinquent state poll, road and hospital tax, the taxes due each school, road, or other lesser taxation district, added to the taxes on real estate, where the real estate is liable therefor, or the several taxes are due from the same person; *provided, however*, that before publication of said list the tax collector and auditor shall jointly arrange said list in such manner that said publication shall designate in some particular manner the property contained

in said list which was sold to the state five years previous, on which the taxes remain unpaid, or which property has not been redeemed or the sale thereof canceled, and which property the state would otherwise be entitled to a deed thereof after the lapse of five years from said previous sale.

Act of the Legislature, approved April 4, 1919;  
in effect July 22, 1919.

Section 1405.—NOTICE OF SALE.—The Tax Collector must append and publish with the delinquent list a notice, that unless the taxes delinquent, together with the costs and penalties, are paid, the real property upon which such taxes are a lien, will be sold. The publication must be made once a week for three successive weeks in some newspaper, or supplement thereto, published in the county newspaper, or supplement thereto, published in the county.

The publication must designate the day and hour when the property will, by operation of law, be sold to the state, which sale must not be less than twenty-one nor more than twenty-eight days from the time of the first publication, and the place shall be in the tax collector's office.

Political Code, Sections 3765, 3766, 3767.

Section 1406.—LAND SOLD FOR TAXES ENCUMBERED BY TRUST DEED OR MORTGAGE.—Whenever land to be sold for taxes is encumbered by trust deed or mortgage, and the taxes for which the land is to be sold is for the value over and above the encumbrance, as the said encumbrance is shown by and upon the assessment-roll in the tax collector's office, the tax collector shall at least ten days before the date of sale mail a copy of the notice of sale to the mortgagee named in any such mortgage and the trustees named in any such trust deed. When the addresses of the mortgagee named in any mortgage and the trustees named in any trust deed are unknown to the tax collector, he shall mail said notice in said names to the



county seat of the said county. The tax collector shall file a copy of said notice with an affidavit of time and place of mailing same with the county recorder and county clerk, respectively.

Political Code, Section 3760-A.

Section 1407.—**ADDITIONAL SUM COLLECTED TO DEFRAY COSTS.**—The tax collector must collect, in addition to the taxes due on the delinquent list, together with the penalties for delinquency, fifty cents on each lot, piece, or tract of land separately assessed, and on each assessment of personal property, which shall be paid to the county and be placed to the credit of the salary fund.

Political Code, Section 3770.

Section 1408.—**TAX SALES.**—On the day and hour fixed for the sale, all the property delinquent, upon which the taxes of all kinds, penalties and costs have not been paid, shall, by operation of law and the declaration of the tax collector, be sold to the state, and said tax collector shall make an entry, "Sold to the state," on the delinquent assessment list, opposite the tax, and he shall be credited with the amount thereof in his settlement; *provided*, that on the day of sale the owner or person in possession of any property offered for sale for taxes due thereon, may pay the taxes, penalties, and costs due; *and provided, further*, that when the original tax amounts to the sum of three hundred dollars or more upon any piece of property or assessment delinquent, the state may bring suit against the owner of said property for the collection of said taxes, penalties, and costs; *and provided, further*, that any property contained in the advertised list, which has not been redeemed from the sale made to the state five years previously, shall be sold by the tax collector at public auction to the highest bidder for cash in lawful money of the United States; but no bid shall be accepted at such sale for less than the amount of all taxes, penalties and costs due as shown in said advertised list. After such bid

has been made and accepted the right of redemption shall cease, except as to the purchaser, who shall have thirty days within which to make redemption, and if not so redeemed or if no sale is had under the provisions of this paragraph then said property shall be deeded to the state; *and provided, further*, when any property is to be sold at public auction as provided in this section, within five days after the first publication of said delinquent list, the tax collector shall mail a copy of said list or publication, postage thereon prepaid and registered, to the party to whom the land was last assessed next before such sale, at his last known post-office address; or in lieu of mailing the entire printed list said tax collector may mail to the party to whom the land was last assessed next before the sale at his last known post-office address, postage thereon prepaid and registered, a printed notice of such sale.

Act of the Legislature, approved May 3, 1919;  
in effect July 22, 1919.

Section 1409.—**TIME FOR REDEMPTION OF PROPERTY.**—The redemption of the property sold may be made by the owner, or any party in interest, within five years from the date of the sale to the state, or at any time prior to the entry of said land by the state.

Political Code, Section 3780.

Section 1410.—**HOW REDEMPTION IS MADE.**—Redemption must be made to the county treasurer on an estimate furnished by the auditor, in lawful money of the United States.

Political Code, Section 3781.

Section 1411.—**TAX DEEDS MADE AFTER FIVE YEARS.**—If the property is not redeemed within five years from the date of the sale to the state, the tax collector, or his successor in office, must make the state a deed of the property. All such deeds shall be recorded in the office of the

county recorded of the county wherein the property sold is situated.

Act of the Legislature, approved April 28, 1911.

Section 1412.—EVIDENCE OF TAX DEEDS.—The tax deed, duly acknowledged or approved, is primary evidence that the property was assessed as required by law; that the property was equalized as required by law; that the taxes were levied in accordance with the law; that the taxes were not paid; that at a proper time and place the property was sold as prescribed by law, and by the proper officer; that the property was not redeemed; that the person who executed the deed was the proper officer, and the tax deed is conclusive evidence of the regularity of all other proceedings, from the assessment by the assessor, inclusive, to the execution of the deed. There is an exception to this rule in the case of actual fraud, and if a levy of an assessment, or the assessment itself, or any other requisite proceeding leading up to the execution of the deed, was procured or done by fraudulent acts, then the deed would not be protected by the law, and would not be conclusive of the facts recited in it.

Political Code, Section 3787.

Act of the Legislature, approved May 5, 1917; in effect July 27, 1917.

Section 1413.—STATE LANDS SOLD FOR DELINQUENT TAXES.—When state lands, upon which the full purchase price has not been paid, have been sold to the state for delinquent taxes, and the deed therefor to the state has been forwarded to and filed with the surveyor general, the said lands shall again become subject to entry and sale, in the same manner, and subject to the same conditions, as apply to other state lands of like character; except that the former possessors or owners of the land thus deeded to the state, their heirs or assigns, shall be preferred purchasers thereof for the period of six months after the deeds are filed with the surveyor general; during which

said period of six months no application by any person other than said former possessors, or owners, their heirs or assigns, shall be filed; and provided further, that the former possessors or owners of said land thus deeded to the state, their heirs or assigns, shall have the right to be restored to their former estate and title (at any time either during the said period of six months above referred to, or afterwards, and before application for said land is made and filed with the surveyor general by any other person) upon paying to the county treasurer of the county wherein the said land is situated a sum equivalent to the taxes, penalties, costs and accruing costs by virtue whereof the state became a purchaser of the said lands, and also, all delinquent taxes, penalties, and costs which may have accrued upon such lands subsequent to the date of the certificate of purchase under which the former possessors or owners, or their heirs and assigns, claim title to said lands, and also all unpaid interest up to the first day of January. If such former owner or possessor, his heirs or assigns desires to avail himself of the privileges hereof, he shall file with the surveyor general the receipt of the county treasurer, showing the payment of all such taxes, together with all unpaid interest up to the first day of January following the date when he shall make the said payment to the said county treasurer, and thereupon the surveyor general shall give to such person a certificate signed and sealed by him, but which need not be acknowledged, showing full payment of all such sums, which said receipt of the surveyor general shall be recorded by said persons in the county recorder's office of the county wherein the said lands are situated; and the said receipt, when so recorded, shall have the same effect as a deed of reconveyance of the interest conveyed by such deed, and the said former owner or possessor, his heirs or assigns, shall thereby be restored to all his rights in the said lands, and his certificate of purchase shall be in full force and effect as effectually as though no sale had been made; but the surveyor general shall not receive or file any applica-



tion or make a sale of any lands thus deeded to the state, except upon the previous payment into the state treasury, as other moneys are required to be paid therein, in addition to the price of said lands as compared with the price fixed for other state lands of like character, by the person or persons proposing to file the application and make the purchase, of a sum equal to the delinquent taxes, penalties, costs and accruing costs, by virtue whereof the state became a purchaser of the lands thus sought to be entered or purchased, and also all delinquent taxes, penalties and costs which may have accrued upon such lands prior to and subsequent to the date of the sale to the state in pursuance of which the state received a deed therefor; and the surveyor general's authority for filing said application, if said lands are otherwise subject to sale, shall be the production by said applicant of the county treasurer's receipts showing full payment of the delinquent taxes, penalties and costs as herein specified.

If an application for the land is not presented to the surveyor general's office by the party, or his agent, who paid the delinquent taxes, penalties and costs, by virtue whereof the state became a purchaser of said land, within a period of fifteen days after the payment thereof, the land shall be subject to sale to the first person presenting his application for said land to the surveyor general's office, accompanied by a certified copy of the auditor's estimate and treasurer's receipt, showing full payment of all delinquent taxes, penalties and costs, as herein specified. An estimate of the amount of delinquent taxes, penalties and costs, as herein specified, must be made by the county auditor of the county wherein the land is situated, upon the written request of the surveyor general, and without cost to the state. Said county auditor's estimate shall include all delinquent taxes, penalties and costs, as shown by the records in the state land office, by virtue whereof the state became a purchaser of the land thus sought to be entered or purchased, and also all delinquent taxes, penalties and costs which may have accrued upon

such lands prior to and subsequent to the date of the sale to the state in pursuance of which the state received a deed therefor.

Nothing in this act contained shall apply to land situated within the exterior boundaries of an Indian or Forest reservation created by authority of the United States, or of a National Monument, or within the exterior boundaries of lands withdrawn from public entry for forest purposes.

Act of Legislature, approved May 1, 1911.

Section 1414.—SEIZURE AND SALE OF PERSONAL PROPERTY FOR TAXES.—The tax collector of each county, and city and county, has the power, and it is made by law his duty, to collect the taxes due on personal property, except when real estate is liable therefor, by seizure and sale of any personal property owned by the delinquent. The sale must be at public auction, and of a sufficient amount of the property to pay taxes, percentage and cost. The sale must be made after one week's notice of the time and place thereof, given by publication in a newspaper in the county, or by posting in three public places.

Political Code, Sections 3790, 3791, 3792.

Section 1415.—TITLE OF PERSONAL PROPERTY SOLD FOR TAXES.—On payment of the price bid for any property sold, the delivery of the property with a bill of sale vests the title in the purchaser. There is no redemption from a sale of personal property.

Political Code, Section 3794.

Section 1416.—PERSONAL PROPERTY AT RISK OF OWNER.—The unsold portion of any personal property sold for taxes may be left at the place of sale, at the risk of the owner.

Political Code, Section 3796.

Section 1417.—REFUND OF ERRONEOUSLY COLLECTED TAXES.—Any taxes, penalties or costs thereon heretofore

or hereafter paid more than once, or heretofore or hereafter erroneously or illegally collected, or any taxes heretofore or hereafter paid upon an assessment in excess of the actual cash value of the property so assessed by reason of a clerical error of the assessor as to the excess in such cases, or any taxes heretofore or hereafter paid upon an erroneous assessment of improvements on real estate not in fact in existence, when said taxes became a lien, may, by order of the board of supervisors, be refunded by the county treasurer. Whenever any payment shall have been made to the state treasurer by the county treasurer, and it shall afterward appear to the satisfaction of the board of supervisors that a portion of the money so paid should be refunded as herein provided, said board of supervisors may refund such portion of the said taxes, penalties and costs so paid to the state treasurer, to the person paying the same or to his guardian, or in case of his death, to his executor or administrator, out of the general fund, and upon the rendering of the report required the auditor shall certify to the controller, in such form as the controller may prescribe, all amounts so refunded, and in the next settlement of the county treasurer with the state, the controller, if satisfied of the legality of such refunding by the said board, shall give such treasurer credit for the state's portion of the amounts so refunded. When the taxes, penalties and costs hereinbefore referred to are levied in behalf of any school district or any municipal or other public corporation, and collected by the officers of the county, the same may be refunded upon order of the board of supervisors, and the county treasurer shall pay the amount to be refunded out of any money in his possession belonging to the appropriate fund of such school district or municipal or other public corporation. No order for the refund of taxes, penalties or costs under this section shall be made except upon a verified claim therefor verified by the person who has paid said tax, or by his guardian, or in case of his death, by his executor or administrator,

which said claim must be filed within three years after the making of the payment sought to be refunded.

All such payments not refunded under the provisions of this section within the time allowed therefor may be transferred to the general fund of the county upon an order to that effect by the board of supervisors.

In no case shall any judgment be rendered in favor of plaintiff in any action brought for the enforcement or allowance of any rights or claims under this section (except in actions brought by the county treasurer to enforce any credits hereinabove provided for) if the said action be brought by an assignee of the person paying said tax, or by any person other than the person who has paid said tax, or by his guardian, or in case of his death, by his executor or administrator.

Act of the Legislature, approved May 10, 1919;  
in effect July 22, 1919.

Section 1418.—PUBLIC LANDS UPON WHICH FINAL PAYMENT HAS NOT BEEN MADE.—Whenever the possessory interest in land belonging to the United States, or land upon which final payment had not, at the time of assessment, been made to the United States, or land of this state upon which the full purchase price has not or had not been made to the state, has been, or may hereafter be, assessed and sold to the state for delinquent state, county or local district taxes, or whenever the taxes levied against any such possessory interest in lands, or against any such state lands, have not been paid, the board of supervisors shall, upon verified application of the owner of the land, by an order entered upon its minutes, direct the auditor to cancel such assessment; and if the property under such assessment has been sold to the state, and a certificate of sale or deed thereon issued to the state, such order of the board shall further direct the recorder to cancel such certificate of sale and deed; provided, that no order to cancel any such assessments, certificates of sale or deeds shall be made where the person or persons to whom such land or possessory in-



terests, or state lands, his or their successors or assigns, have, after such assessment, obtained from the United States or this state a patent or the absolute title to said lands, or retain any interest therein, or been in possession of the premises; and provided that no order to cancel any assessment shall be made whereby the person or persons, his or their successors or assigns shall be relieved from paying the taxes upon said property for the full time he or they have had the possession of said property, no matter in whose name said property was or had been assessed. Before an order to cancel such assessment, certificate of sale or deed shall be granted, the applicant shall file with the board a certificate of the Register of the United States Land Office, or of the state land office, showing that the person or persons to whom such assessment was made, his or their successors and assigns, never received a patent or otherwise acquired title to said lands. Upon affecting the cancellations, all assessments, certificates of sale and deeds the subject of such cancellation shall be null and void.

Political Code, Section 3805a.

Section 1419.—CLERICAL ERRORS IN CERTIFICATE OF SALE.—When real property has been correctly assessed and sold to the state for delinquent state and county taxes, any misstatement of facts or clerical errors occurring or appearing in the certificate of sale, or in the deed issued thereon, may be corrected by the tax collector, or his successor in office, upon an order of the board of supervisors, entered upon its minutes directing correction, by the issuance of a new or amended certificate of sale, or tax deed, when it can be determined by the assessment and subsequent proceedings what was originally intended.

Political Code, Section 3805b.

Section 1420.—MISTAKES WHICH DO NOT AFFECT SALE OF PROPERTY FOR TAXES.—When land is sold for taxes correctly imposed as the property of a particular person, no misnomer of the owner, or supposed owner, or other

mistake relating to the ownership thereof, affects the sale, or renders it void or voidable.

Political Code, Section 3807.

Section 1421.—PROPERTY SOLD TO STATE ASSESSED SUBSEQUENTLY.—In case property assessed for taxes is purchased by the state, it shall be assessed each subsequent year for taxes until a deed is made to the state therefor, in the same manner as if it had not been so purchased.

Political Code, Section 3813.

Section 1422.—ALL COSTS MUST BE PAID BEFORE REDEMPTION.—In case property is sold to the state, and is subsequently assessed, no person shall be permitted to redeem such sale, except upon payment of the amount of such subsequent assessments, costs, fees, penalties, and interest.

Political Code, Section 3815.

Section 1423.—WHEN FORMER OWNERS MAY REDEEM LANDS SOLD FOR DELINQUENT TAXES.—In all cases where real estate has been sold, or may hereafter be sold for delinquent taxes to the state, and the state has not disposed of the same, the person whose estate has been, or may hereafter be sold, his heirs, executors, administrators, or other successors in interest, shall, at any time after the same has been sold to the state, and before the state shall have disposed of the same, have the right to redeem such real estate by paying to the county treasurer of the county wherein the real estate may be situated, the amount of taxes, penalties and costs due thereon at the time of said sale, with interest on the aggregate amount of said taxes, at the rate of seven per cent per annum; and also all taxes that were a lien upon said real estate at the time said taxes became delinquent; and also all unpaid taxes of every description assessed against the property for each year since the sale; or, if

not so assessed, then upon the value of the property as assessed in the year nearest the time of such redemption, with interest from the first day of July following each of said years, respectively, at the same rate, to the time of redemption; and also all costs and expenses of such redemption, and penalties as follows, to wit: ten per cent if redeemed within six months from July first following the date of sale; twenty per cent if redeemed within one year therefrom; thirty per cent if redeemed within two years therefrom; forty per cent if redeemed within three years therefrom; forty-five per cent if redeemed within four years therefrom; and fifty per cent if redeemed within five or any greater number of years therefrom. The penalty shall be computed upon the amount of each year's taxes in like manner, reckoning from July first following the date when the lands would have been sold for the taxes of that year, if there had been no previous sales thereof.

The county auditor shall, on the application of the person desiring to redeem, make an estimate of the amount to be paid, and shall give him triplicate certificates of the amount, specifying the several amounts thereof, which certificates shall be delivered to the county treasurer, together with the money, and the county treasurer shall give triplicate receipts, written or indorsed upon said certificates, to the redemptioner, who shall deliver one of said receipts to the state controller, and on to the county auditor, taking their receipts therefor.

The county treasurer shall settle for the moneys received as for other state and county moneys. Upon the payment of the money specified in said certificate, and the giving of the receipts aforesaid by the treasurer, controller, and auditor, any deed or certificate of sale that may have been made to the state shall become null and void, and all right, title and interest acquired by the state, under and by virtue of the tax sale, shall cease and determine. Upon consummation of the redemption, the auditor shall report the same to the tax collector and re-

order; the recorder shall, without payment of fee, note on the margin of the certificate of sale, or deed, if issued, the fact of such redemption, date thereof, and by whom redeemed.

The receipt of the controller may be recorded in the recorder's office of the county in which said real estate is situated in the book of deeds, and the record thereof shall have the same effect as that of a deed of reconveyance of the interest conveyed by such deed or certificate of sale.

This act shall not apply to state lands sold by the state when the full amount of the purchase price has not been paid to the state therefor, after the deed to the state has been filed with the surveyor general.

Act of the Legislature, approved May 18, 1919;  
in effect July 22, 1919.

Section 1424.—PARTIAL REDEMPTION.—A partial redemption may be made, separately from the whole assessment, of any lot, piece, or parcel of land contained in any assessment, if such lot, piece, or parcel has a separate valuation on the assessment roll, in the manner following: In the estimate provided for, the auditor shall estimate the amount of state and county taxes due on such lot, piece, or parcel of land, together with a proper proportion of the taxes due on personal property under such assessment, and of the taxes due each school, road, or lesser taxation district; and such redemption shall be made in the manner provided in this act. The recorder shall note, on the margin of the record of the certificate of sale, a description of the property thus redeemed, and shall specifically set forth the several amounts of taxes paid upon such redemption.

Political Code, Section 3818.

Section 1425.—PAYMENT UNDER PROTEST.—At any time after the assessment book has been received by the tax collector, and the taxes have become payable, the



owner of any property assessed therein, who may claim that the assessment is void in whole or in part, may pay the same to the tax collector under protest, which protest shall be in writing, and shall specify whether the whole assessment is claimed to be void, or if a part only, what portion, and in either case the grounds upon which such claim is founded; and when so paid under protest, the payment shall in no case be regarded as voluntary payment, and such owner may at any time within six months after such payment bring an action against the county, in the superior court, to recover back the tax so paid under protest. And if it shall be adjudged that the assessment, or the part thereof referred to in the protest, was void on the ground specified in the protest, judgment shall be entered against such county therefor; provided, that no assessment shall be declared void on account of deductions being made for mortgages where part payments have been made and not released upon the record.

Political Code, Section 3819.

Section 1426. — SALE OF PROPERTY PURCHASED BY STATE.—Whenever the state shall become the owner of any property sold for taxes and the deed to the state has been filed with the controller as provided herein, the controller may thereupon by a written authorization direct the tax collector of the county, or city and county, to sell the property or any part thereof as in his judgment he shall deem advisable in the manner following: He must give notice of such sale by first publishing a notice for at least three successive weeks in some newspaper published in the county or city and county, or if there be no newspaper published therein, then by posting a notice in three conspicuous places in the county or city and county, one of which shall be at the United States post-office nearest the land, in addition to a notice conspicuously posted on the land itself for the same period. Such notices must state specifically the place of and the day

and hour of sale, and shall contain a description of the property to be sold and shall also contain a detailed statement of all the delinquent taxes, penalties, costs, interest, and expenses up to the date of such sale, and shall give the name of the person to whom the property was assessed for each year on which there may be delinquent taxes against said property or any part thereof; and said notice shall also embody a copy of the authorization received from the controller. It shall be the duty of the tax collector to mail a copy of said notice within five days after its publication, postage thereon prepaid and registered, to the party to whom the land was last assessed next before the sale, at his last known postoffice address. At the time set for such sale, the tax collector must sell the property described in the controller's authorization and said notices, at public auction to the highest bidder for cash in lawful money of the United States; but no bid shall be received or accepted at such sale for less than the amount of all the taxes levied upon such property and all costs and penalties for every year delinquent, as shown by the delinquent rolls for said years to the date of the execution of the deed to the state, and all expenses accrued to the date of the sale under this section, together with interest at seven per cent per annum from the first day of July following delinquency in each of said years to the date of the sale hereunder, computed upon the aggregate amount of such delinquent taxes, penalties and costs; provided, however, that if the board of supervisors of the county, or city and county, in which any such property is situate, shall, by resolution entered upon their minutes, declare that, in their judgment, the property so owned by the state, and particularly described in said resolution, is not at that time of value great enough that it can be sold by the state for a sum equal to the amount of all taxes levied upon said property, and all interests, costs and penalties and expenses up to the date of such sale, and that it would be to the best interest of the state to sell the said property for a sum

to be stated in said resolution less than the sum above named, upon receipt of a copy of said resolution, certified by the clerk of said board of supervisors, the state controller may thereupon, by written authorization, direct the tax collector of the county, or city and county, to sell the said property so described in said resolution for a sum not less than the sum stated in said resolution, together with the expenses of sale. The expense of giving the notice herein required shall be a charge against the property so advertised, and shall be collected by the collector, and no redemption of such property before said sale may be had without payment of such cost of advertising; and to secure the payment of such advertising cost the collector shall demand in advance, from the party or parties seeking to purchase, a deposit with said officer of a sum sufficient to defray such cost of advertising, which deposit shall be forfeited in the event said party or parties fail or refuse to purchase at such sale; provided, that if the party or parties so depositing fail to secure such property on their bid, such deposit shall be returned, and such advertising cost shall be collected from the successful purchaser.

Political Code, Section 3897.

Section 1427.—VOID SALE—FAILURE TO MAIL NOTICE TO PARTY LAST ASSESSED.—It has already been stated that tax laws are strictly construed, and that in order to make a valid tax title it must appear that everything was done from the beginning to the end of the tax proceedings which the law requires to be done. An illustration of this statement is found in a case appealed to the Supreme Court of California from Mendocino County. It appeared on the trial of this case that the address of the person to whom the land in controversy was last assessed was well known to the tax collector, and that no copy of the notice of the proposed sale of the land by the state was mailed to the owner prior to the sale, as required by Section 3897 of the Political Code. It was held by

the Supreme Court in this case that a sale by the state of land sold to it for non-payment of taxes is void, where the tax collector through whom such sale is made fails to mail a copy of the notice of sale to the person to whom the land was last assessed next before the sale, at the address shown on the assessment roll. The mailing of such notice, where the address of the party is known, or shown on the assessment roll so that it can be ascertained, is essential to the validity of a sale by the state of land purchased by it for delinquent taxes. (Decided by the Supreme Court of California, in the case of *Wright vs. Anglo-Californian Bank*, which decision is printed in Volume 42, California decisions, page 760.)

Section 1428. — FRAUDULENT ASSESSMENT. — A taxpayer may go into the Superior Court of the county where he is assessed and obtain an injunction prohibiting the collection of a tax founded upon an assessment fraudulently and corruptly made, with the intention of discriminating against him, and for the purpose of causing him to pay more than his share of the public taxes. This was determined by the Supreme Court of California in a case in Alameda County, where the property owner alleged that the assessment was fraudulently made, at excessive values, in fixing which he was discriminated against. In this case the property owner tendered the legal tax, or an amount founded on the real value of the property, which was not accepted, and the suit followed. (Decided by the Supreme Court of California, in the case of *Pacific Postal Telegraph Co. vs. Dalton*, which decision is printed in Volume 51 of the Pacific Reporter, page 1072.)

Section 1429. — SEAT IN STOCK EXCHANGE. — In a case in San Francisco, the question was whether or not a seat in the San Francisco Stock and Exchange Board is taxable property, and the Supreme Court decided that it is not. The Court said that a seat in the Stock Ex-



change is merely a personal privilege of being and remaining a member of a voluntary association, with the consent of the associates, and is not property that will pass by a sale under the common writ of execution; and it has no such qualities as make it assessable and taxable as property. It is a mere right to belong to an association, with the latter's consent, and to enjoy certain personal privileges and advantages which flow from membership in the association. Those privileges and advantages cannot be conveyed without the consent of the association, and a forced sale of them would not give the purchaser the right to occupy the seat. It is too impalpable to go into any category of taxable property. (Decided by the Supreme Court of California, in the case of City and County of San Francisco vs. Anderson, which decision is printed in Volume 36 of the Pacific Reporter, page 1034.)

Section 1430. — RAILROAD BONDS.—Bonds held by a permanent resident within the state, though issued by a non-resident corporation, and secured by mortgage on property outside the state, may be taxed in this state as property belonging to the resident. Bonds of a railroad corporation organized in Arizona, payable in New York, and secured by a mortgage in Arizona, were taxed in California, as the property of a permanent resident of the state, and the Supreme Court decided that the tax was valid under the provision of the Constitution which defines property for the purpose of taxation, and expressly declares it to include, among other things, moneys, credits and bonds. (Decided by the Supreme Court of California, in the case of Mackay vs. City and County of San Francisco, which decision is printed in Volume 45 of the Pacific Reporter, page 696.)

Section 1431.—TAXATION OF SHIP ON THE HIGH SEAS.—It has been held that a ship engaged in commerce on the high seas was taxable in the City and County of San

Francisco, where the managing owner of the vessel resided there, although she had been temporarily registered in Washington, had received permanent registration at San Francisco, and had never been in the waters of California, and though some of her owners resided without the state. A vessel must be taxed at the place of her home port, although in fact she may be thousands of miles away on the high seas; and she is taxable only within the state in which her home port is situated. The taxation must be in the state of her home port, at which alone the vessel may be registered. And where the vessel has several owners, it is only the residence of the managing owner that is material. Tangible personal property is ordinarily taxable only in the state where it is physically situated. When, however, we come to sea-going vessels, engaged in foreign or interstate commerce, and not employed in such commerce wholly within the waters of any one state, we find that from the nature of the property a different rule is necessarily adopted. Such a vessel goes where she may be called in the business in which she is engaged, and is in port in any jurisdiction only as an incident to that business, and therefore cannot properly be held to have an actual physical presence within any particular state. Under our shipping laws, however, every such vessel has what is called her "Home Port," the port to which she belongs, and which constitutes her local abiding place or residence, regardless of her actual location. It is only in the collection district comprising her home port that she may be permanently registered. (Decided by the Supreme Court of California, in the case of *Olson vs. City and County of San Francisco*, which decision is printed in Volume 82 of the *Pacific Reporter*, page 850.)

Section 1432.—TAXATION OF OIL LEASES.—Where a land owner grants to a lessee the exclusive right to enter on the premises, and bore wells, and extract oil from them, this constitutes on the part of the oil company a

claim to the possession of land, and can be assessed separately from the ownership in fee. The oil stratum also constitutes "minerals in and under the land," and the rights of the lessee are rights and privileges appertaining to such minerals, and hence are "real estate" within the meaning of Section 3617 of the Political Code. The rights of an oil lessee to extract oil from land constitute a claim to the possession of land, which may be assessed and taxed; and if the taxes thereon are not paid and no personal property of the owner can be found, the assessor can forthwith proceed to sell the rights under the lease, and give immediate possession to the purchaser. (Decided by the Supreme Court of California, in the case of Graciosa Oil Co. vs. Santa Barbara County, which decision is printed in Volume 99 of the Pacific Reporter.)

Section 1433.—INHERITANCE TAXES.—For the Inheritance Tax Law, see under the subject about settlement of estates.

Section 1434. — CORPORATION TAXES. — The law provides for the taxation of public service and other corporations, banks, and insurance companies, for the benefit of the state. This law provides that taxes levied, assessed and collected upon railroads, including street railways, whether operated in one or more counties; sleeping car, dining car, drawing room car and palace car companies, refrigerator, oil, stock, fruit, and other car loaning and other car companies, operated upon railroads in this state; companies doing express business on any railroad, steamboat, vessel or stage line in this state; telegraph companies; telephone companies; companies engaged in the transmission or sale of gas or electricity; insurance companies; banks, banking associations, savings and loan societies, and trust companies, shall be assessed and levied by the state board of equalization. (For the Federal income tax see the subject "Corporations in California.")

1. *Public Service Corporations.*—All railroad companies, including street railways, whether operated in one or more counties; all sleeping car, dining car, drawing-room car and palace car companies; all refrigerator, oil, stock, fruit and other car-loaning and other car companies operating upon the railroads in this state; all companies doing express business on any railroad, steamboat, vessel, or stage line in this state; all telegraph and telephone companies; and all companies engaged in the transmission or sale of gas or electricity; shall annually pay to the state a tax upon their franchise, roadways, rails, rolling stock, pipes, rights of way, and other property, or any part thereof used exclusively in the operation of their business in this state, computed as follows: Said tax shall be equal to the percentages hereinafter fixed upon the gross receipts from operation of such companies within this state. When such companies are operating partly within and partly without this state, the gross receipts on business beginning and ending within this state, and a proportion, based upon a proportion of the mileage within this state to the entire mileage with which this business is done, passing through, into, or out of this state. The percentages above mentioned shall be as follows: On all railroad companies, five and one-fourth per cent; on all sleeping car, dining car, drawing-room car, palace car companies, refrigerator, oil, stock, fruit, and other car-loaning, and other car companies, three and ninety-five hundredths per cent; on all companies doing express business on any railroad, steamboat, vessel or stage line, nine-tenths of one per cent; on all telegraph and telephone companies, four and two-tenths per cent; on all companies engaged in the transmission or sale of gas and electricity, five and six-tenths per cent. Such taxes shall be in lieu of all other taxes and licenses, state, county, and municipal, upon the property above enumerated of such companies, except as otherwise provided in the Constitution of this state.



Section 1434, page 1112, "Business Law for Business Men"—CORPORATION TAX—Under Public Service Corporations, on page 1112, the law about percentages to be paid by companies is changed to read as follows: "On all railroad companies, seven per cent; on all street railways, herein defined to include interurban electric railways and gasoline propelled railways, five and a quarter per cent; on all sleeping car, dining car, drawingroom car, palace car companies, refrigerator, oil, stock, fruit, and other car-loaning, and other car companies, five and one-quarter per cent; on all companies doing express business on any railroad, steamboat, vessel or stage line, one per cent; on all telegraph and telephone companies, five and one-half per cent; on all companies engaged in the transmission or sale of gas or electricity seven and one-half per cent.

(a) INSURANCE COMPANIES—The rate to be paid by insurance companies has been increased to two and sixty hundredths per centum.

(b) STATE AND NATIONAL BANKS—The rate on state and national banks has been increased to one and forty-five hundredths per centum.

(c) FRANCHISE TAX—The rate of tax on franchises has been increased to one and six-tenths per centum.

Act of the Legislature of California, 1921; in effect immediately.



Act of the Legislature, in effect May 11, 1917.

2. *Insurance Companies*.—Every insurance company or association doing business in this state shall annually pay to the state a tax of two per cent upon the amount of the gross premiums received upon its business done in this state, less return premiums and reinsurance by companies; provided, that there shall be deducted from said two per cent upon the gross premiums the amount of any county and municipal taxes paid by such companies on real estate owned by them in this state. This tax shall be in lieu of all other taxes and licenses, state, county, and municipal, upon the property of such companies, except county and municipal taxes on real estate and except as otherwise provided in the Constitution of this state; provided, that when by the laws of any other state or country, any tax, fines, penalties, licenses, fees, deposits of money or of securities, are imposed on insurance companies of this state doing business in such other state or country, or their agents therein, in excess of such taxes, the same impositions and prohibitions of whatever kind must be imposed by the insurance commissioner upon insurance companies of such other state or country doing business in this state.

3. *State and National Banks*.—The shares of capital stock of all banks, organized under the laws of this state, or of the United States, or of any other state, and located in this state, shall be assessed and taxed to the owners or holders thereof by the state board of equalization, in the city or town where the bank is located, and not otherwise. There shall be levied and assessed upon such shares of capital stock an annual tax, payable to the state, of one and sixteen-hundredths per centum upon the value thereof. The value of each share of stock in each bank, except such as are in liquidation, shall be taken to be the amount paid in thereon, together with its pro rata of the accumulated surplus and undivided profits. The value of each share of stock in each bank which is in liquidation shall be taken to be its pro rata of the actual

assets of such bank. This tax shall be in lieu of all other taxes and licenses, state, county, and municipal, upon such shares of stock and upon the property of such bank, except county and municipal taxes on real estate, and except as otherwise provided in the constitution of this state. In determining the value of the capital stock of any bank there shall be deducted from the value, as defined above, the value, as assessed for county taxes, of any real estate, other than mortgage interests therein, owned by such bank and taxed for county purposes. The banks shall be liable to the state for this tax, and the same shall be paid to the state by them on behalf of the stockholders, and they shall have a lien upon the shares of stock and upon any dividends declared thereon to secure the amount so paid.

Act of the Legislature, in effect May 11, 1917.

4. *Tax on Unincorporated Banks, and on Branches and Agencies of Foreign Banks.* The moneyed capital, reserve, surplus, undivided profits, and all other property belonging to unincorporated banks or bankers of this state, or held by any bank located in this state which has no shares of capital stock, or employed in this state by any branches, agencies, or other representatives of any banks doing business outside of the State of California, shall be likewise assessed and taxed to such banks or bankers by the said board of equalization, in the same manner as above provided for incorporated banks, and taxed at the same rate that is levied upon the shares of capital stock of incorporated banks. In the case of a branch, an agency, or other representative of any bank doing business outside of this state, the capital of said branch, agency, or representative used in this state shall be taken to be the average amount owed by the said branch, agency, or representative to the bank of which it is a branch, agency, or representative during the year ending the first Monday in March. The value of said property shall be determined by taking the entire prop-



erty invested in such business, together with all reserve, surplus, and undivided profits, at their full cash value, and deducting therefrom the value as assessed for county taxes of any real estate, other than mortgage interests therein, owned by such bank or banker and taxed for county purposes. Such taxes shall be in lieu of all other taxes and licenses, state, county, and municipal, upon the property of the banks and bankers mentioned herein, except county and municipal taxes on real-estate, and except as otherwise provided in the Constitution of this state. All moneyed capital and property of the banks and bankers mentioned in this paragraph shall be assessed and taxed at the same rate as an incorporated bank. In determining the value of the moneyed capital and property of the banks and bankers mentioned herein, the state board of equalization shall include and assess to such banks property and everything of value owned or held by them which would go to make up the value of the capital stock of such banks and bankers, if the same were incorporated and had shares of capital stock.

The word "banks" as used in this act shall include banking associations, incorporated banks and bankers, branches, or other representatives of other banks doing business outside of the State of California, Savings and Loan Societies, and such Trust Companies as conduct the business of receiving money on deposit, but shall not include building and loan associations.

5. *Tax on Franchise*.—All franchises other than those of public service corporations, insurance companies, and state or national banks, shall be assessed at their actual cash value, after making the due deductions for good will, and shall be taxed at the rate of one and two-tenths per centum each year, and the tax collected thereon shall be exclusively for the benefit of the state. This franchise shall include the actual exercise of the right to be a corporation and to do business as a corporation under the laws of this state, and the actual exercise of the right to do business as a corporation in this state, when such

right is exercised by a corporation incorporated under the laws of any other state or country; also the right, authority, privilege, or permission to maintain wharves, ferries, toll roads and toll bridges, and to construct, maintain or operate, in, under, above, upon, through or along any streets, highways, public places or waters, any pipes, canals, ditches, tanks, conduits or other means for conducting water, oil, or other substances.

Act of the Legislature, in effect May 11, 1917.

6. *Gross Receipts From Operation Defined.*—The term “gross receipts from operation” as used in this act is defined to include all sums received from business done within this state during the year ending the 31st day of December last preceding, including the company’s proportion of gross receipts from any and all sources on account of business done by it within this state in connection with other companies.

In case of companies operating partly within and partly without this state, the gross receipts within this state shall be deemed to be all receipts on business beginning and ending within this state, and the proportion based upon the proportion of the mileage within this state to the entire mileage over which such business is done, of receipts on all business passing through, into or out of this state.

No deduction shall be allowed from the gross receipts from operation for commissions, rebates, or other repayments, except only such refunds as arise from errors or overcharges nor shall any deduction be allowed for payments from gross receipts to other companies for any purpose whatsoever, except such refunds as arise from errors or overcharges.

Income derived from property not defined in this act as operative property shall not be included in the gross receipts for the purpose of determining the tax on the property and franchises.

7. “*Operative Property*” Defined.—The term “operative property” as used in this act shall include:

(a) In the case of railroad companies, including street railways: The franchises, roadway, roadbed, rails, rolling stock, rights of way, sidings, spur tracks, switches, signal systems, cranes and structures used in loading and unloading cars, fences along the right of way, poles, wires, conduits, power lines, piers, used exclusively in the operation of the railroad business, depot grounds and buildings, ferry boats, tugs and car-floats used exclusively in the operation of the railroad business; machine shops, repair shops, round houses, car barns, power houses, substations and other buildings, used in the operation of the railroad business and so much of the land on which said shops, houses, barns, and other buildings are situate as may be required for the convenient use and occupation of said buildings.

(b) In the case of sleeping car, dining car, drawing-room car and palace car companies, refrigerator, oil, stock, fruit, and other car-loaning, and other car companies operating upon railroads in this state: The franchises, cars and other rolling stock.

(c) In the case of companies doing express business on any railroad, steamboat, vessel, or stage line in this state: The franchises, cars, trucks, wagons, horses, harness, and safes.

(d) In the case of telegraph and telephone companies doing business in this state: The franchises, rights of way, poles, wires, pipes, conduits, cables, switchboards, telegraph and telephone instruments, batteries, generators, and other electrical appliances, and exchange and other buildings used in the telegraph and telephone business and so much of the land on which said buildings are situate as may be required for the convenient use and occupation of said buildings.

(e) In the case of companies engaged in the transmission or sale of gas or electricity: The franchises, towers, poles, wires, pipes, canals, tunnels, ditches, flumes, aque-

ducts, conduits, rights of way, dams, reservoirs, water and water rights used exclusively in the business of the transmission or sale of gas or electricity; transformers, substations, gas-holders, gas and electric generators, switches, switchboards, meters, electrical and gas appliances, oil tanks, power plants, power houses, and other buildings and structures used in the operation of the business of the transmission or sale of gas or electricity, and so much of the land on which said buildings and structures are situate as may be required for the convenient use and operation of said buildings.

Provided, that the operative property of the companies enumerated shall also include any other property not above enumerated that may be reasonably necessary for use by said companies exclusively in the operation and conduct of the particular kinds of business enumerated in this act.

8. *Operative Property Exempt from Local Taxation.* The operative property mentioned above in subdivisions (a), (b), (c), (d), and (e), shall not be subject to taxation for county, municipal, or district purposes, except as otherwise provided for in the constitution and laws of this state.

Provided, however, that when any piece or parcel of property in this state owned by any of the companies mentioned is used partially by such company for any use reasonably necessary to the operation of any of the lines of business enumerated, and such property is also partially rented to or used by others or is partially used by the company for some other lines of business not among those so enumerated, or for purposes not reasonably necessary to the operation of any of said enumerated lines of business, it shall be considered operative property, in that proportion only which that part of the property mentioned in this proviso used by the company in the operation of any of said enumerated lines of business, bears to the whole of the property mentioned in this proviso.



9. *Plants Under Construction.*—Any property of the classes mentioned, owned by a company constructing a new railroad, street railway, telegraph or telephone system, or plant or system for the transmission or sale of gas or electricity, no part of which new road, line, plant, or system is in operation, and the same classes of property when held by an operating company solely for the construction of a new railroad or railway line, a new telegraph or telephone system, or a new plant or system for the transmission or sale of gas or electricity, and not to be used for betterments or additions to roads, lines, plants, or systems already under operation, shall not be considered operative property, and shall be subject to assessment and taxation for county, municipal and district purposes. The property of any company shall be deemed to be in operation as to such part of the new road, line, plant, or system as may be in use as soon as it offers and renders service to the public for compensation; *provided, however*, that the state board of equalization shall finally determine the fact of such operation and the liability of any such company to be taxed upon its gross receipts.

10. *When No Service Is Rendered to Public.*—When any property in this state belonging to a company of the classes named is rendering no service to the public in this state, even though it may be rendering service to the public in some other state or states, such property shall not be considered as operative property, and shall be subject to assessment and taxation for county, municipal, and district purposes.

11. *Report of Public Service Companies.*—Such person or officer, as the state board of equalization may designate, of each company, shall, on or before the first Monday in March of each year, file with the said board a report signed and sworn to by one or more of said persons or officers, showing in detail for the year ending the thirty-first day of December last preceding, the various items as follows:

(1) The name of the company, its nature, whether a person or persons, a partnership (with names of partners), an association, or corporation, and under the laws of what state, territory or country organized, the nature of its business, the location of its principal place of business, the names and postoffice addresses of its president, secretary, auditor, treasurer, superintendent, and general manager, the location of its principal place of business in this state, the name and postoffice address of its chief officer or managing agent in this state, and the names and addresses of all subsidiary companies whose property and business are operated by it, and the names and addresses of any company of which it may be subsidiary.

(2) Each of the companies shall report, in such detail as the state board of equalization shall prescribe, all of its property in this state which comes under the definition of operative property. When any such company operates both within and without this state it shall report the mileage over which it operates, both within and without this state. It shall also report the location of said property within this state by counties, cities and counties, municipalities, and districts, in such manner and in such detail as said board of equalization shall prescribe. It shall also, at the same time, furnish a duplicate of the report covering so much of said property as is located in any county, city and county, municipality, or district, to the assessor of the county, city and county, city, or district in which such property is located.

The state board of equalization may require the filing in its office of maps descriptive of all the operative property of any such companies, and may prescribe the form and size of such maps and the details to be shown therein, and may require that similar maps descriptive of the operative property within each county, city and county, municipality, or district, shall be filed in the assessor's office in each county, city and county, city, or district in which any of said property is located.

(3) The amount of capital stock issued, and the amount of money received therefor, showing separately the capital stock issued and the money received therefor of the operating company and of each subsidiary company in this state.

(4) The dividends paid during the year ending the thirty-first day of December last preceding, the surplus fund, if any, on said thirty-first day of December, or between such periods as the state board of equalization may determine, those of the operating company and of each subsidiary company in this state to be shown separately.

(5) The funded and floating debts and the rate of interest thereon, showing separately the debts of the operating company and of each subsidiary company in this state, on the thirty-first day of December last preceding.

(6) The market value of the stock and of the outstanding bonds, or, when said stock or bonds have no market value, the actual value thereof, for such periods and for such dates as the state board of equalization shall prescribe.

(7) The amounts expended for improvements during the year ending the thirty-first day of December last preceding, how expended and the character of the improvements.

(8) The gross receipts from operation within this state for the year ending the thirty-first day of December last preceding, the gross receipts from such classes of business as the state board of equalization may designate, to be reported separately; also, where the property and business are partly within and partly without this state, the gross receipts for said period on all business beginning and ending entirely within this state, and that proportion of the gross receipts from all business passing through, into, or out of this state, which the mileage within this state bears to the total mileage over which such interstate business is done as further defined in section seven of this act.

(9) The operating and other expenses.

(10) The balances of profit and loss, between such periods as the state board of equalization may determine.

(11) Such other matters as the state board of equalization may deem necessary.

Each such company shall include in its report the property and business of all subsidiary companies whose property and business are operated by it, whether by virtue of a lease, an operating contract or agreement, or by virtue of control through the ownership of stock or otherwise, even though such subsidiary companies maintain an independent legal existence and separate accounts.

The term "subsidiary company" is hereby defined as applying to a company which is merged in the operating system of an operating company in any of the ways above stated, whose property and franchises would be taxable by this act if the same were operated independently. No separate report need be rendered by a subsidiary company whose property, franchises, and operations are fully and completely covered by the report of an operating company, unless the state board of equalization shall deem such a separate report necessary.

12. *Separate Reports of Certain Subsidiary Companies.*—Each such company operating the property and business of a subsidiary company in some line of business to which a different percentage of the gross receipts is applied by this act from that applied to the gross receipts of the operating company, shall report such receipts of the subsidiary company separately.

13. *Hearings and Decisions by State Board.*—If any assessor finds in the report of the operative property in his county, city and county, municipality, or district, furnished to him by any of the companies as required in this act, any piece or parcel of property which he regards as non-operative property, or partially operative and partially non-operative, he shall, within thirty days after receiving such report, notify the state board of equalization thereof by mail, which notice shall contain a general



description of the property and the assessor's reasons for regarding the same as non-operative property. He shall also mail a copy of the notice to the company whose property is involved. The said board shall investigate the nature of the property and its use, and, if an agreement between the said board, the assessor and the company as to the proper classification of such property cannot be reached, then the said board shall, under such rules of notice as it may deem reasonable, set a date for a hearing, at which the assessor and the company may be present or represented. At such hearing the board shall, from the evidence presented and from the best information it can obtain, decide the matter in dispute, and determine whether such property is operative or non-operative, or in what proportion operative and in what proportion non-operative.

If the state board of equalization shall find in the report of operative property furnished to said board by any company under the provisions of this act, any piece or parcel of property which said board regards as non-operative property, or partially operative and partially non-operative, the board shall, within thirty days after receiving such report, notify said company thereof in writing, which notice shall contain a general description of the property and the reasons for regarding the same as non-operative. It shall also mail a copy of the notice to any assessor in whose county, city and county, municipality, or district the property is located. If an agreement between the said board, the assessor, and the company as to the proper classification of such property cannot be reached, then the said board shall, under such rules of notice as it may deem reasonable, set a date for a hearing, at which the assessor and the company may be present or represented. At such hearing the board shall, from the evidence presented and from the best information it can obtain, decide the matter in dispute, and determine whether such property is operative or non-operative.

14. *Insurance Commissioner to Report.*—The insur-

ance commissioner of this state must, on or before the last day of March in each year, make and file with the state board of equalization a report showing:

(1) All companies, domestic and foreign, and all firms, associations, or persons, engaged in the business of insurance in this state.

(2) The total amount of the gross premiums received from its business in this state by each of said companies, firms, associations, and persons during the year ending the thirty-first day of December last preceding.

(3) The amount of return premiums paid on business done in this state and the amount of reinsurance on business done in this state paid to other insurance companies or associations authorized to do business in this state, by said companies, firms, associations, and persons, during said year.

(4) The amount of any county and municipal taxes paid during said year by such companies on real estate owned by them in this state, and where said real estate is located.

In making this report he shall list separately all those companies, firms, associations, or persons, which are subject to a tax at a rate higher than one and one-half per cent on their gross premiums, or to any additional tax or burden, and shall indicate in each case the amount and character of said tax or burden.

15. *Additional Statements by Insurance Companies.* Every company, firm, association, or person engaged in the business of insurance in this state shall file with the insurance commissioner on or before the first Monday in March in each year such statements in addition to, or in modification of, the statements required to be rendered under the provisions of the Political Code as said insurance commissioner shall deem necessary to enable him to prepare the report required of him in this act, and said statements shall be verified in the same manner as is provided for the verification of other statements by insurance companies, except that those filed by foreign compa-

nies shall be verified by the oath of the manager thereof residing within this state.

16. *Bank Reports.*—The president, secretary, treasurer, cashier, or such other officer as the state board of equalization may determine, of every bank shall on the first Monday in March, or within ten days thereafter, make and file with the state board of equalization a sworn statement showing the condition of said bank at the close of business on the first Monday in March, and showing the amount of its authorized capital stock, the number of shares issued and the par value thereof, the amount received for stock issued, the amount of its surplus and undivided profits, if any, a complete list of the names and residences of its stockholders, and the number of shares held by each as of record on the books of the bank at the close of business on the first Monday in March; or, in the case of unincorporated banks and bankers, of banks having no capital stock and of branches, agencies, or other representatives of banks doing business outside of this state, the moneyed capital, reserve, surplus, undivided profits, and other taxable property used by them in the banking business in this state; also a description of the real estate, other than mortgage interests therein, and the value of each piece thereof as assessed for the purpose of county taxation for the then current fiscal year. Branches, agencies, or other representatives of banks doing business outside of this state, shall report the average amount owed by said branches, agencies, or other representatives, to the banks of which they are branches, agencies, or representatives, during the year ending the first Monday in March; also a description of the real estate other than mortgage interests therein, and the value of each piece thereof as assessed for the purpose of county taxation for the then current fiscal year. The state board of equalization shall prescribe the form of reports, the manner of their verification, and may require the submission of tax receipts, or copies thereof certified to be correct by any notary public, in order to verify the

statements as to the assessed value of the real estate, and may require such further information or statements as said board may deem necessary.

17. *Owners of Franchise Report.*—The owner or holder of every franchise subject to taxation shall within ten days after the first Monday in March in each year, make a written report to the state board of equalization, signed and sworn to by the holder or owner himself, if an individual, or by one of the copartners if such owner or holder is a copartnership, or by the president or vice-president and the treasurer and secretary, if the owner is a corporation, containing such a concise statement or description of every franchise possessed or enjoyed on said day by such owner or holder, as the state board of equalization may prescribe, a copy of the law, grant, ordinance, or contract under which the same is held, or if possessed or enjoyed under a general law, a reference to such law, a statement of any condition, obligation, or burden imposed upon such franchise, or under which the same is enjoyed, and containing also:

(1) The name of the company, its nature, whether a person or persons, a partnership (with names of partners), an association, or corporation, and under the laws of what state, territory, or county organized, the nature of its business, the location of its principal place of business, the names and postoffice addresses of its president, secretary, auditor, treasurer, superintendent, and general manager, the location of its principal place of business in this state, the name and postoffice address of its chief officer or managing agent in this state, and the names and addresses of all subsidiary companies whose property and business are operated by it.

(2) The amount of its authorized capital stock, the amount thereof issued and outstanding on the first Monday in March, and the amount paid in thereon or the value of the property received therefor.

(3) The funded and floating debts and the interest paid thereon showing separately the debts of the oper-



ating company and of any subsidiary companies in this state on the thirty-first day of December last preceding.

(4) The market value of the stock and of the outstanding bonds, or, when said stock or bonds have no market value, the actual value thereof, for such periods and for such dates as the state board of equalization shall prescribe.

(5) The assessed value of its property as assessed for the current fiscal year in each county, city and county, and city in the state for the purposes of taxation, and if any property of such corporation be assessed and taxed outside of the state of California the place where assessed, the amount of such assessment and taxes there paid during such current fiscal year.

In case the company, person, firm, association, or corporation making such report cannot or does not fairly and fully state the facts and matters contained in the foregoing subdivisions 1 to 5, inclusive, then such company, person, firm, association, or corporation must render an additional report containing the following matters, to-wit:

(6) The dividends paid during the year ending the thirty-first day of December last preceding, the surplus fund, if any, on said thirty-first day of December, or between such periods as the state board of equalization may determine. Those of the operating company and of each subsidiary company in this state to be shown separately.

(7) The gross receipts from all sources for the year ending the thirty-first day of December last preceding, from the entire property and business, the gross receipts from such classes of business as the state board may designate, to be reported separately; also, where the property and business are partly within and partly without this state, the gross receipts for said period on all business beginning and ending entirely within this state, and that proportion of the gross receipts from all business passing through, into, or out of this state, which the

mileage within this state bears to the total mileage over which such interstate business is done as further defined in section seven of this act.

(8) The operating and other expenses.

(9) The balances of profit and loss, between such periods as the state board of equalization may determine.

(10) Such other matters as the state board of equalization may deem necessary.

The state board of equalization shall ascertain and determine from the foregoing reports or from the best information it can obtain, the actual cash value on the first Monday in March of each such franchise, and shall assess and levy the taxes thereon.

18. *Arbitrary Assessment in Case of Failure or Refusal to Report.*—If any company mentioned shall fail or refuse to furnish to the state board of equalization within the time prescribed in this act the verified report provided for in this act, the state board of equalization must make an estimate of the amount of the gross receipts, gross premiums, value of the shares of capital stock, or value of the franchises, of such company, and must assess the same at the amount thus estimated, which assessment shall be the assessment upon which the taxes upon the property or franchise of the company for such year shall be levied and collected. And if in the succeeding year any such company shall again fail or refuse to furnish the verified report required by this act, the state board shall make an estimate of the amount of the gross receipts, gross premiums, value of the shares of capital stock, or value of the franchise of such company, which estimate shall not be less than twice the amount of the estimate made by said board in the previous year, and the said estimate so made shall be the assessment upon which the taxes upon the property or franchise of the company for such year shall be levied and collected. In case of each succeeding consecutive failure or refusal the said board shall follow the same procedure until a true statement shall be furnished.

19. *Penalty for Failure or Refusal to Report.*—Any company failing or refusing to make and furnish any report prescribed in this act, or rendering a false or fraudulent report, shall be guilty of a misdemeanor and subject to a fine of not less than three hundred dollars and not exceeding five thousand dollars for each such offense.

20. *Penalty for False Report.*—Any person required to make, render, sign, or verify any report, who makes any false or fraudulent report, with intent to defeat or evade the assessment required by this act to be made, shall be guilty of a misdemeanor, and shall for each such offense be fined not less than three hundred dollars and not more than five thousand dollars, or be imprisoned not exceeding one year in the county jail of the county where said report was verified, or be subject to both said fine and imprisonment, at the discretion of the court.

21. *Extension of Time for Filing Report.*—The state board of equalization may, for good cause shown, by order entered upon its minutes, extend for not exceeding thirty days, the time fixed in this act for filing any report herein provided for.

22. *Bank Waiver of Assessment to Individual Stockholder.*—If any bank shall by resolution of its board of directors, request the state board of equalization to assess to and in the name of such bank so requesting, the entire taxable value of all the shares of the capital stock of such bank, as determined by said state board, instead of assessing such shares to and in the name of the individual stockholders or shareholders owning the same, and if such bank shall promise that it will, upon being notified by said state board, of such assessment thereof to said bank, and of the amount of taxes to be paid upon such assessment, pay such taxes at the times when taxes assessed and levied under this act are due and payable; which request to assess said bank and promise to pay said tax shall be in substantially the following form:

The state board of equalization is hereby instructed to assess in the name of this bank and not to the individual stockholders or shareholders therein, the taxable value of all the shares of capital stock in this bank, and such bank hereby promises to pay to the state treasurer the amount of the tax levied upon such assessment when such taxes are due and payable under the laws of this state.

By.....  
(Here insert title of official signing.)

Then the state board may assess the capital stock to and in the name of such bank, and said promise to pay the taxes shall be binding upon such bank, and collection of such taxes from such bank may be enforced.

23. *Correction of Assessment.*—The state board shall have power at any time on or before the first Monday in July to correct the record of assessments for state taxes, and may increase or decrease any assessment therein if in its judgment the evidence presented or obtained warrants such action.

24. *Taxes, When Due and When Delinquent.*—The taxes assessed and levied as provided by the provisions of this act, shall be due and payable on the first Monday in July in each year, and one-half thereof shall be delinquent on the sixth Monday after said first Monday in July at six o'clock P. M., and unless paid prior thereto, fifteen per cent shall be added to the amount thereof, and unless paid prior to the first Monday in February next thereafter at six o'clock P. M., an additional five per cent shall be added to the amount thereof; and the unpaid portion, or the remaining one-half of said taxes shall become delinquent on the first Monday in February next succeeding the day upon which they became due and payable at six o'clock P. M.; and if not paid prior thereto five per cent shall be added to the amount thereof; provided, that all taxes provided for or levied under this act which are not fully secured by real property are due and payable at the time the assessment is made. When



in the opinion of the state board of equalization any of the taxes provided for are not a lien upon real property sufficient to secure the payment of the taxes, said board may direct the controller, or his duly authorized representative, to collect the same at any time before the first Monday in August thereafter, and the controller may collect the taxes by seizure and sale of any property owned by the company against whom the tax is assessed.

25. *Sale of Property for Taxes.*—The sale of any property seized shall be made at public auction and of a sufficient amount of the property to pay the taxes, penalties and costs, and be made after one week's notice of the time and place of such sale given by publication in a newspaper of general circulation published in the county where the property seized is situate, or if there be no newspaper of general circulation published in such county, then by posting of such notice in three public places in such county. On payment of the price bid for any property sold, the delivery thereof with bill of sale executed by the controller vests the title in the purchaser. The unsold portion of any property so seized, may be left at the place of sale at the risk of the owner. All of the proceeds of any such sale in excess of the taxes, penalties, and costs, must be returned to the owner of the property sold, and until claimed must be deposited in the state treasury subject to the order of the owner thereof, his heirs, or assigns.

26. *Taxes a Lien.*—The taxes levied under the provisions of this act shall constitute a lien upon all the property and franchises of every kind and nature belonging to the companies subject to taxation for state purposes, which lien shall attach on the first Monday in March of each year. Every tax herein provided for has the effect of a judgment against the company, and every lien created by this act has the effect of an execution duly levied against all property of the delinquent; the judgment is not satisfied nor the lien removed until such taxes, penalties, and costs are paid, or the property sold

for the payment thereof.

27. *Taxes erroneously Collected.*—Whenever any taxes, penalties, or costs collected and paid under the provisions of this act shall have been paid more than once, or shall have been erroneously or illegally collected, or when any taxes shall have been collected and paid pursuant to this act upon a computation erroneously made by reason of clerical mistake of the officers or employees of the state board of equalization, or shall have been computed in a manner contrary to law, the state board of equalization shall certify to the state board of examiners the amount of such taxes, penalties, or costs, collected in excess of what was legally due, from whom they collected or by whom paid, and if approved by said board of examiners, the same shall be credited to the company or person to whom it rightfully belongs, at the time of the next payment of taxes. No claim for such credit shall be so audited, approved, allowed, or paid unless presented within one year after the payment sought to be refunded.

28. *Protest of Taxes.*—Any company, person, or association dissatisfied with any assessment made by the state board of equalization may bring an action against the state treasurer for the recovery of any taxes, penalties, or costs paid on such assessment, but no such action may be brought later than the third Monday in February next following the day on which the taxes were due, nor unless such company, person or association shall have filed with the state controller at the time of payment of such taxes a written protest stating whether the whole assessment is claimed to be void, or if part only, what part, and the grounds upon which such claim is founded; and when so paid under protest the payment shall in no case be regarded as voluntary. Whenever under the provisions of this section an action is commenced against the state treasurer, a copy of the complaint and of the summons must be served upon the treasurer, or his deputy. At the time the treasurer demurs or answers, he may

demand that the action be tried in the Superior Court of the County of Sacramento, which demand must be granted. The attorney general must defend the action.

29. *Controller to Send Notice of Delinquent Taxes.* Within ten days after the first Monday in February, the controller shall send by mail to the last known address of any company whose taxes are delinquent a notice of the amount of said taxes, penalties, and costs, and that if the said taxes, penalties, and costs are not paid on or before the first Monday in March next thereafter at six o'clock P. M., the delinquent company, if it be a domestic corporation, will forfeit its charter to the state, and that if the delinquent company be a foreign corporation it will forfeit its right to do business in this state.

30. *Charter Forfeited for Delinquent Taxes.*—If the taxes, penalties, and costs are not paid within the time specified in said notice, the controller shall, on the Saturday preceding said first Monday in March at six o'clock P. M., mark on the record of assessments for state taxes opposite the assessment of the delinquent company the words "charter forfeited to the state," if the delinquent company be a domestic corporation, and thereupon said charter shall be so forfeited; and if the delinquent company be a foreign corporation the words "right to do business forfeited," and thereupon said right to do business shall be so forfeited. He shall at once report to the secretary of state the name and number of charter of each corporation whose charter or right to do business has been forfeited for non-payment of taxes, and the secretary of state shall at once report the same to the governor. The governor shall forthwith issue his proclamation, declaring that the charters of such domestic corporations have been forfeited and the right of such foreign corporations to do business in this state has been forfeited. Said proclamation shall be filed immediately in the office of the secretary of state, and the secretary of state shall immediately cause a copy of said proclamation to be published in one issue of one

daily newspaper of general circulation published at the state capital, of one daily newspaper of general circulation published in the City and County of San Francisco, and of one daily newspaper of general circulation published in the City of Los Angeles. The secretary of state shall thereupon transmit a certified copy of the proclamation to each county clerk in this state, who shall file the same in his office.

Act of Legislature, approved April 30, 1919;  
in effect July 22, 1919.

31. *Relief from Forfeiture.*—Any such corporation making subsequent payment of all taxes, penalties, and costs due the state, and in addition thereto an amount equal to the taxes levied under this act for the year in which such forfeiture occurred, for each year subsequent to such forfeiture and to the time of such redemption, shall be relieved of such forfeiture, and the controller shall notify the secretary of state thereof, and the secretary of state shall annually on the first Monday in April transmit to the county clerk of each county in this state a list of the corporations so paying, and which have been relieved of such forfeiture, which list shall be by said county clerk filed in his office; provided, the rehabilitation of a corporation under the provisions of this act shall be without prejudice to any action, defense or right which accrued by reason of the original forfeiture; and provided, that in case the name of any corporation which has suffered the forfeiture prescribed in this act, or a name so closely resembling the name of such corporation as will tend to deceive, has been adopted by any other corporation since the date of said forfeiture, then said corporation having suffered such forfeiture shall be relieved therefrom pursuant to the terms of this section only upon the adoption by said corporation seeking revivor of a new name, and in such case nothing in this act contained shall be construed as permitting such corporation to be revived or carry on any business under



its former name; and such corporation shall have the right to use its former name or take such new name only upon filing an application therefor with the secretary of state and upon the issuing of a certificate to such corporation by the secretary of state, setting forth the right of such corporation to take such new name or use its former name, as the case may be; *provided, however*, that the secretary of state shall not issue any certificate permitting any corporation to take or use the name of any corporation heretofore organized in this state, and which has not suffered a forfeiture prescribed by this act, or to make or use a name so closely resembling the name of such corporation heretofore organized in this state as will tend to deceive.

32. *State Board to Equalize Assessments.*—Whenever the state board of equalization is satisfied after investigation that any county assessor, or board of equalization, has assessed any real estate belonging to any bank above its full cash value and has thereby unjustly reduced the amount of taxes due the state from said bank, said state board shall, under such rules of notice to the clerk of the board of supervisors of the county affected thereby as the said state board shall deem reasonable, equalize the assessed value of such real estate, and shall upon completion of said equalization issue an order to said assessor or board of equalization and to the county auditor of the county in which said real estate is located, fixing the assessed value of said real estate. The value so equalized and fixed, and no other, shall be deemed the value, as assessed for county taxes, of such real estate, and the sole basis of taxation upon such real estate for county taxes.

The state board of equalization shall immediately after the county and city assessments have been completed, ascertain the value of any real estate belonging to any insurance company as assessed and equalized for purposes of county and of city taxation. Whenever the state board of equalization is satisfied after investiga-

tion, that any county, city and county, city, or district assessor, or board of equalization, has assessed any real estate belonging to any insurance company above its full cash value and has thereby unjustly reduced the amount of taxes due the state from said insurance company, said state board shall, under such rules of notice to the clerk of the board of supervisors of the county or the proper officer of the city affected as the board shall deem reasonable, equalize the assessed value of such real estate and shall, upon the completion of said equalization, issue an order to said assessor or board of equalization and to the county, city and county, city, or district auditor or clerk of the county, city and county, city, or district in which said real estate is located, fixing the assessed value of said real estate. The value so equalized and fixed, and no other, shall be deemed the value, as assessed for county, city and county, city, or district taxes, of such real estate, and the sole basis of taxation upon such real estate for county, municipal and district taxes.

Act of the Legislature, approved April 1, 1911.



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